Public Utilities Fortnightly

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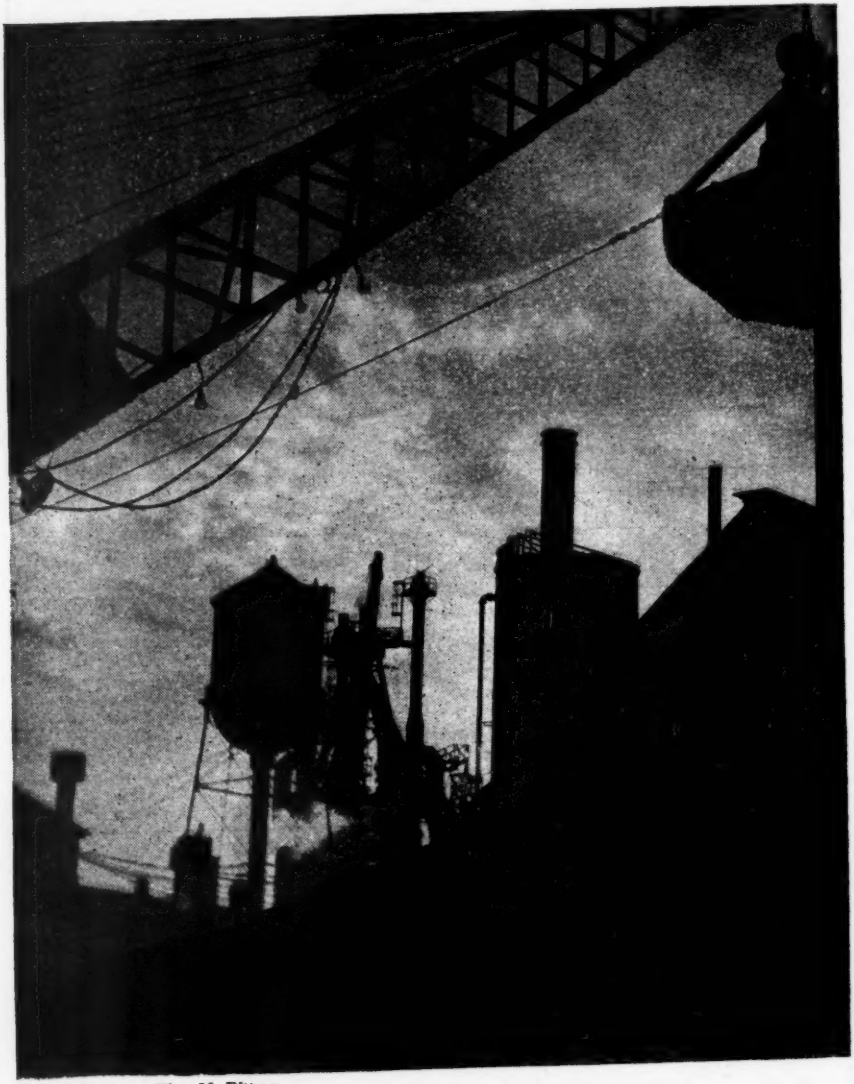
Public Utilities Almanack

OCTOBER

26	T^h	DEWITT CLINTON officially opened the Erie Canal, 1825. The first spike was driven in the construction of the Southern Pacific Railroad, 1866.
27	F	The Grand Trunk Railroad, between Quebec and Montreal, was opened, 1856. The Interborough Rapid Transit subway in New York was opened, 1904.
28	S^a	CLERK MAXWELL announced his theory of radio wave propagation, 1864. The Mohawk & Hudson Railroad was capitalized at $2,000,000, 1833.
29	S	The steamboat *"Robert Fulton"* was launched in New York, 1814. "Black Tuesday" on the N. Y. Stock Exchange sent utility securities tumbling, 1929.
30	M	The United States Patent Office issued rights on the MORSE telegraph code, 1835. MOISANT won $10,000 prize by encircling Statute of Liberty in an airplane, 1910.
31	T^u	Cincinnati's first steamboat *"General Pike"* landed her first passengers, 1819. The first train passed over the international railway bridge, Niagara Falls, 1873.

NOVEMBER

1	W	First locomotive built in U. S. made its maiden run in South Carolina, 1830. Interstate passenger transportation by air started between Detroit and Cleveland, 1927.
2	T^h	First broadcasting station, KDKA, was opened in East Pittsburgh, Pa., 1920. TOM JOHNSON acted as motorman to celebrate Cleveland's 3¢ car fare, 1906.
3	F	The first natural gas pipe line, 40 miles long, was laid in Pennsylvania, 1882. Work began on the first telegraph line in the U. S., Baltimore to Washington, 1843.
4	S^a	JOHN HOPKINSON of England made the first study of costs of electricity, 1892. ROBT. HOOKE of England prophesied the invention of the telephone, 1667.
5	S	Citizens of Chicago formed a company to supply water through log pipes, 1840. Pennsylvania Railroad put into service the first all-steel passenger coaches, 1906.
6	M	Northern Pacific Railroad put its first sleeping car into service, 1881. The PACKARD brothers of Warren, Ohio, completed their first motor car, 1899.
7	T^u	PHILIP REIS invented telephone that transmitted pitch but not speech, 1861. Stagecoach travel between New York and Philadelphia was speeded up to 5 days, 1750.
8	W	The first U. S. mail to be carried by steam railroads left Charleston, S. C., 1832. British Parliament passed laws to regulate the worsted weavers, 1442.



Camera study by Wm. M. Rittase

Silhouettes of Service

Public Utilities
FORTNIGHTLY

VOL. XII; No. 9 OCTOBER 26, 1933

The Outlook for the Investor in Public Utility Securities

A state-by-state survey of the factors which at present affect and which are likely to affect investments in public service enterprises

BY C. F. BLANCHARD

THAT it may be the underlying purpose of the present Federal administration to upset the public utility business is a conjecture which is causing grave apprehension in the minds of many investors in utility securities. That is to be expected, for the Democratic party is one which long has been heralded as opposed to the manner in which the public utility business is at present conducted and organized. Moreover, several major policies which have been adopted since the New Deal came into being can easily be interpreted in this light. Such policies include:

(1) The action of the 73rd Congress in reversing the 3 per cent tax on domestic and commercial power sales, so that it became payable by the companies and not the consumer:

(2) Preparations for the development of the Tennessee Valley and Grand Coulee projects, with intimations to the effect that the power developed at both places would be sold in competition with power from privately owned projects:

(3) Offers of the Public Works Administration to loan money on behalf of the government to municipalities desiring to build or acquire their

own electric light and power systems:

(4) The rather hasty action of the National Recovery Administration in declaring that the electric light and power companies should adopt codes which would mean substantial increases in their expenses and at the same time announcing, that it did not imply that the codes should be used as an excuse for asking for higher rates. Indications are that this attitude has been qualified to some extent.

OTHER less well-defined fears are in the wind. Behind the scenes at Washington the Federal Power Commission is reported to be planning to assume control over the interstate transmission of electricity, utility holding companies, service contracts with operating companies, and other matters long uncontrolled by governmental authority. This causes some apprehension, for there are many investors who continue to feel that the railroad business has been reduced to its recent impecunious state by Federal governmental interference, forgetting, perhaps, that the railroads some years ago were accused of many misdoings similar to those which lately have been laid at the doors of the public utility companies.

It is, of course, possible if not probable that this series of events, which have seemed to imply that the Federal government is hot on the heels of the utility industry with a tomahawk in its hand, was merely circumstantial and that the implied intent is not quite what it seems. Moreover, there are sound reasons for expecting that the Federal government cannot and will not go as far in public utility matters as it did in the case of the railroad business. For one thing, the constitutional means for doing so appear to be lacking; the clauses through which the Washington administration can or might attempt to exercise authority over public utility matters are extremely limited in scope. One of these, already used as the basis for most of the public utility legislation which Congress has adopted, is the power to control navigable waters. It apparently is stretching this power somewhat to make it apply to all phases of the business of companies which seek to develop the power of such streams, yet the means whereby this is accomplished evidently are legitimate on the basis of a broad interpretation of that provision in the Constitution.

Investors generally are familiar with the Federal government's power to regulate interstate commerce, through a clause in the Constitution which also is interpreted very broadly and which is the basis for much Federal legislation regarding railroads and various business practices. But the fact remains that there are a great number of utility companies whose properties do not cross state lines. This clause evidently offers no basis for the Federal government to exercise control over such companies as the Edison Electric Illuminating Company of Boston, the Cleveland Electric Illuminating Company, the Long Island Lighting Company, and numerous others, situated similarly.

OF course, even though the bases upon which the Federal government might attempt to exercise control over local utility matters are tenu-

ous, it is in an excellent position to influence subsidiary governments, and if it had any arch policy along suggested lines it could accomplish a great deal by indirection in lieu of direct action. It is not altogether certain, however, that it has any such dire intentions; rather considered belief seems to be that the true purpose of the Federal government is to assist the local authorities by curbing influences which may be beyond their jurisdiction.

In fact, there are numerous indications to the effect that the states will continue to exercise the strongest control over local operating units and that they will, in fact, assert themselves against Federal interference. Such resistance was seen in the reception accorded proposals or queries by various companies with respect to the NRA codes. The state of New Hampshire, speaking through its Public Service Commission, disapproved such action on the part of companies under its jurisdiction and several other similar state bodies gave their tacit approval to similar rejoinders.

Such developments, as well as others, are convincing to the belief that the states would not readily surrender to higher authority and this might be reassuring, in a certain sense, were it not for the fact that a large number of the states, too, are currently revealing a tendency to handle utility matters with a certain amount of severity. In this respect, of course, the grievance is not entirely one for the utilities to wail about, for there has evidently been a considerable abuse of their enfranchised position, if not by the operating companies themselves, at least as the result of the holding companies and other interests which have dominated them. Conditions which were revealed by the collapse of several holding company systems furnish a large section of the public, at least, with reasonable grounds for supposing that there may be more misdoings of similar character to be brought to light and that a firm hand is necessary for the time being.

FROM an investor's standpoint, the fact that the forty-eight states follow as many as forty-eight different policies and that these are frequently subject to alteration with changes in the political complexion of their governments is even more perplexing than it might be were there one broad policy outlined and followed by a single agency, such as might be provided by a Federal commission with adequate power. Hence, for the finer points of public utility regulation, within limits in which the courts are not likely to intervene, it is manifestly necessary to become acquainted with the attitude shown towards utility matters

¶ "IN *general, the attitude of a majority of the state commissions has not been destructive; in fact, many of the more conservative units follow policies which are distinctly constructive from the investor's viewpoint, so long as they stick to companies under their jurisdiction.*"

by the governments and regulatory bodies of the states.

In general, the attitude of a majority of these bodies has not been destructive; in fact, many of the more conservative units follow policies which are distinctly constructive from the investor's viewpoint, so long as they stick to companies under their jurisdiction. When considering the measures which the states have adopted during the last four years, consideration must, in fairness, be given to the desperate straits in which many of them have been and, in fact, still are. The matter of taxes, for example, is one which need not bespeak any intention on the part of state governments to bear down on the utility business with unnecessary severity. Many states have been sorely pressed for revenues with which to carry on necessary state functions and relief work and the utilities, which, in many instances, have been practically the only companies within their borders to retain any vestige of a former prosperity, have been natural targets. Likewise demands for lower rates have been largely the result of the "hard times" upon sorely pressed consumers from which commissions have striven to give some relief. Likewise, also, the consuming public has been reluctant to have local companies pay dividends to out-of-state holding companies which, so far as they know, may be using the money for such purposes as were revealed by the downfall of the Insull empire.

Again generally speaking, the attitudes of the local state governments, amidst all these factors on the one hand, and the complaints of investors on the other, have steered a fair middle course. There are exceptions in both directions; some states are going to extremes and some have not been fully alive to the problem and have not yet taken effective measures to bring their companies into line. These will be discovered in the following outline of the general outlook for the utility companies as reflected by the attitudes of governors, legislatures, and regulatory bodies in the forty-eight political subdivisions of the Union.

ALABAMA: The outlook for the utility companies in this state is beclouded more because of the implied threat to the private businesses of the Muscle Shoals project than because of any action which the state is likely to take. In general, the important companies work well with the present Public Service Commission, which is believed to be a fair-minded body and they have granted lower rates wherever possible. A few years ago the state levied a tax of 2.5 mills on each kilowatt hour generated and sold, and just recently levied a tax of 3 per cent on the gross incomes of all corporations, but this appears to represent more the state's need for additional income than any antiutility sentiment. While, in general, sentiment in Alabama would appear to be somewhat more opposed to the private operation of utility systems, as now conducted, than otherwise, nevertheless there are no indications that any drastic action is contemplated. The legislature, which meets quadrennially, does not have another regular session until January, 1935.

ARIZONA: This state has a Cor-

poration Commission of three members with broad powers; on May 1st it established a tax of 2 per cent on gross revenues from the sale of gas and electricity for domestic and commercial purposes and 1 per cent on commercial sales which tax, however, can be passed on to consumers. So far as can be determined there is no abounding sentiment in this state to pull down the utility companies. The next regular session of the legislature commences in January, 1935.

ARKANSAS: This state has a Corporation Commission which has broad powers over public utility matters and which, through a Fact Finding Tribunal, is currently conducting an investigation as result of complaints which have been received from various localities. The cost of this investigation is being assessed against the companies. No special tax has been placed on utility operations, although the present condition of state finances, which is precarious, may make such a tax necessary. Otherwise Arkansas does not appear to be the center of any violent antiutility agitation. Generally speaking, the government is opposed to any measures, so far as the utilities are concerned, which might require the outlay of additional funds at this time.

CALIFORNIA: All companies in this state are under the control of the Railroad Commission, a body which has complete powers and which carries out its duties rigorously and fearlessly. While exercising full control over rates and exerting every effort to keep them low, the commission nevertheless believes it to be a part of its duty to protect investors in the local operating companies and has, at times, refused to respond to a call for lower rates on this account. This year an established tax of 7½ per cent of gross was raised to 9 per cent to aid state revenues and certain other adjustments were made of utility taxes. Competition in any given area is possible and, as a matter of fact there was three-way competition in San Francisco until the Pacific Gas and Electric Company absorbed its only privately owned competitor. There has always been a clamor in the large cities to take over the companies but the cost of such a program always has been an effective deterrent. The general attitude of the commission and the state as a whole would appear to invite rather than repeal the confidence of investors.

COLORADO: This state has an appointed Public Utilities Commission of three members but it does not exercise very wide control owing to the fact that large cities, such as Denver, operate on the home-rule principle, which gives them the power to regulate the rates charged by them. A bill to tax utilities was proposed in the last session of the legislature but it failed to pass and there are no major differences of opinion as to the electric rates. A lowering of gas rates in Denver is being discussed but the matter has not yet reached the stage of a formal complaint. Whether it will or not is uncertain. In general so far as utility matters are concerned, the state may be termed quiescent.

CONNECTICUT: This may be termed one of the ultraconservative states in the Union so far as utility matters are concerned. The fact that such a large number of the insurance companies which have their home offices there are heavy investors in public utility securities may be a factor of importance in this connection. The state has a Democratic governor who has not played the rôle of an oppressor of the utility companies to any important degree, and although a statewide investigation of rates is in progress the chances are that the findings and recommendations based thereon will be logical. As evidence of the conservatism of the Connecticut Public Utilities Commission, it was among the first to realize that the adoption of NRA codes would mean increased expenses to local utilities by this adoption to be passed on to the consumers.

DELAWARE: Efforts to create a public service commission during the last session of the legislature failed and consequently there is no regulatory body of this character; unless the legislature is called into special session, no further opportunity will be available to promote this idea until 1935.

The city of Wilmington has its own public utility board and is preparing to undertake a review of the rates charged to see if there has been any undue discrimination against consumers in that city. Generally speaking, however, conditions in the state are not particularly threatening to the Delaware Electric Power Company which, although it controls the relatively profitable Delaware Power and Light Company, nevertheless also maintains a system of transportation companies which are evidently not very profitable. An old tax of 0.1 per cent of gross is in effect.

FLORIDA: The powers of the state Railroad Commission do not extend to electric and gas companies and there appears to be very little pressure to have this arrangement altered; consequently the control of utility rates probably will continue to be left up to the municipalities.

A few cities, notably Miami, are conducting rate investigations with the idea, of course, of lowering them. A tax of 1½ per cent of gross revenues is in effect but this levy appears to have been established principally for the purpose of providing additional revenues for the state income has been none too ample since the collapse of the land boom and the commencement of the depression.

GEORGIA: The situation in this state so far as the utility commission is concerned, as well as other state affairs, has well been described as "comic opera." Georgia has an elective Public Service Commission with broad powers, and although it has been greatly interested in securing lower rates it nevertheless has been regarded as a fair-minded body. The present governor of the state, who appears to be trying to exercise autocratic powers with respect to many phases of the government, recently "tried" the five members of this commission for neglect of duty in not lowering rates,

dismissed them, and has named a commission of his own choosing which evidently will carry out his ideas by ordering the principal companies there to lower their rates by a substantial percentage. It is believed that the governor has exceeded his constitutional powers in this as well as in other respects, and things probably will reach a climax at the next session of the legislature. Since that body does not meet again, except by special call, until January, 1935, it is possible that the courts may intervene in the meanwhile. The outlook for the utility companies obviously is both uncertain and disquieting as a result of such conditions but indications are that the larger companies operating there will not accept the mandates of the new commission supinely. A tax of $\frac{3}{10}$ of one per cent of gross is in effect.

IDAHO: This is a state in which municipal ownership of utilities has been greatly favored—an attitude which is doubtless a counterpart of that taken by Senator Borah, a strong progressive. A recent decision of the state supreme court (in the Coeur d'Alene Case) indicates that the municipalities are not likely to be allowed to acquire or construct utilities by paying for them out of earnings, about the only way in which most localities can finance such endeavors at this time. The state has a Public Utilities Commission with the usual broad powers but its reasonable policies with regard to matters coming before it do not appear to be in particular harmony with political sentiment. On the other hand, it is not a particularly important state, from a utility standpoint, and there is only one company of any size operating there.

ILLINOIS: The Insull debacle, which swept away the value of the investments of a considerable number of the residents, is doubtless responsible for the revulsion of feeling towards the utilities in this state. At the last session of the legislature the Illinois Commerce Commission, which has jurisdiction over the utilities, was given much additional power. It is now permitted to fix rates; the burden of proof that the rates are unfair has been placed on the companies and the commission is allowed to charge the cost of rate investigations against the companies to the extent of one half of one per cent of the revenues involved. In addition it has undertaken a statewide investigation of rates and of various contracts between companies which have been the subject of question, and it would appear as if utility matters there were due for a considerable adjustment in the course of which certain of the most prominent companies might suffer sharp reductions in revenues. On the other hand, the state apparently is willing to let things be handled by the commission and has not proposed any more drastic methods, such as state or municipal seizure of the properties. A 2 per cent occupational sales tax has been voted and the state department of finances has ruled that it must be paid by the companies. On the other hand, the department has also ruled that it must be paid by municipal gas, electric, and water departments also. The vice chairman of the three principal Insull companies operating in

and around Chicago has announced that his companies would oppose this ruling in court.

INDIANA: Antiutility sentiment is on the ascendancy in this state and the Public Service Commission is engaged in a statewide campaign to force rates downward. The authorities there display a tendency to disregard established decisions as to the adequacy of return; their ideas of a "reasonable" figure are considerably lower than those which that body has declared fair. Various communities are seeking to establish municipal plants. A tax of 1 per cent of gross revenues from the sale of gas and electricity went into effect May 1st.

IOWA: The Board of Railroad Commissioners of this state has no jurisdiction over utilities and the general attitude towards them is apathetic, despite a strong minority which is constantly advocating widespread municipal ownership. A tax of 2 per cent of gross revenues was placed in effect this year.

KANSAS: The antiutility sentiment in this state has been directed towards natural gas and holding companies. An important decision was handed down last January by a three-judge Federal court which overruled an order of the State Corporation Commission with regards the price charged the local distributing company in Kansas City by its wholesale supplier and an appeal has been taken which probably will bring the case before the United States Supreme Court. The Public Service Commission has been vehement in its denunciation of holding company practices and a law passed last March provided for a reorganization of the commission and an enlargement of its powers to give it control over securities sold in the state. A tax of 2 per cent of gross revenues is in effect. The antimerchandising law, passed about two years ago, was declared unconstitutional by the state supreme court.

KENTUCKY: The state Railroad Commission's power over utilities extends only to natural gas companies, and matters respecting other forms of utility service are largely left up to the cities. Although the matter of rates is the subject of controversy between the city and Louisville Gas and Electric Company, the state generally appears to be fairly free of antiutility agitation. So far as is known, the utilities are not taxed but it may be that the urgent necessity for revenues with which to carry on various state functions, including schools, will lead to a tax of some sort. In fact a 2 per cent tax was proposed in the special session of the legislature which met last summer.

LOUISIANA: This state has a Public Service Commission of three members, the work of which has been somewhat handicapped by a lack of funds, inasmuch as the state has not been affluent of late. Louisiana is a seething cauldron of politics, but public utilities are a minor issue, even though lower rates are constantly being demanded. In 1932 the state levied a tax of 2 per cent on gross receipts from the sale of electricity.

The legislature meets in regular session in May, 1934; a special session may be called to take up the repeal of constitutional prohibition but is not expected to devote much if any time to utility matters.

MAINE: This state has a Public Utilities Commission which appears to take a reasonable point of view toward matters under its jurisdiction; the essentially conservative character of the population indicates that no unusually severe measures are likely to be entertained. A law to permit the state to tax electrical energy will be voted on in the September elections. The legislature will not meet again until 1935.

MARYLAND: The Public Service Commission in this state controls the companies under its jurisdiction with a firm hand and resents outside interference, as indicated by its attitude with respect to the NRA codes. It has ordered rate reductions frequently but, on the other hand, it does not appear to object to having the utilities under its jurisdiction make a reasonable profit nor does it object to their showing a strong financial position; Consolidated Gas, Electric Light and Power Co. of Baltimore, for example, is one of the soundest companies in the business in these and in many other respects. Except for intermittent demands for lower rates, there is little that is disturbing in the picture and very little agitation for a change in the present situation. A tax of 1 per cent of gross has been in effect for some time and the state, as a whole, presents the appearance of having its utility matters well in hand.

MASSACHUSETTS: The Department of Public Utilities of this state exercises firm and exceptionally complete control, perhaps because of which most of the many companies under its jurisdiction are in strong financial shape. The commission is not lenient and its decisions have, at times, appeared arbitrary but, on the other hand, they usually are sensible. Lately it has recognized the tendency of taxes to increase and the possibility of mounting costs by refusing to respond to popular demands for rate cuts. An extension of the laws recently passed give the commission the power to approve or disapprove loans by operating companies—a feature which has strengthened its hand considerably in dealing with holding company practices. The laws of this state do not countenance the control of local utilities or the ownership of one utility company by another, but this restriction is avoided by the "voluntary association or trust" method. The general methods followed in Massachusetts in regulating its utilities could well serve as a pattern for other states. No special taxes are levied.

MICHIGAN: The agitation for lower gas and electric rates in Detroit and the frequent altercations between officials and representatives of that city and the local companies over rates and other phases of the utility business eclipse matters in the rest of the state, which is fairly quiescent. Rules calling for the reorganization of the Public Utilities Commission were intro-

duced in the last session of the legislature; these were designed to permit the governor to appoint members of his party to office, but the bills failed. Although the commission includes one insurgent, the majority of the body is fair and the various companies maintain easy working relationships therewith and feel that their interests receive adequate consideration. The governor is not an antiutility man. The Detroit situation is not healthy and that municipality may, in the end, find some way to get the upper hand of its companies (some years ago it ousted the street railway company and took over operation of the lines) but the situation elsewhere is no particular cause for investor concern. A tax of 3 per cent is in effect which may, however, be passed on to the consumer.

MINNESOTA: The Minnesota Railroad and Warehouse Commission does not have jurisdiction over gas and electric companies and although it is expected that it will be given this authority eventually, nothing can be done until 1935 unless a special session of the legislature is called. The governor is interested in trying to alleviate the plight of the farmer and eventually a tax may be placed on utility operations, although there is no tax as yet. A state Commission was given the power to regulate the sale of securities and municipalities with generating plants were given the right to sell their output beyond the city or town limits during the last session of the legislature. The formation of a state power commission was also considered, but radical measures were generally avoided. Agricultural rather than utility problems appear to be the matters of greatest interest in this state at this time.

MISSISSIPPI: The Railroad Commission of this state has no jurisdiction over utilities and the state is reluctant to extend its powers or to set up a Public Utilities Commission because of the expense involved. Generally speaking, the utilities here find their principal difficulties to be lack of business and competition from small engine driven plants rather than political interference. A tax of 2 per cent of gross from domestic and commercial consumers is levied; also a tax of 1 per cent of gross from industrial sales. This is to be effective until June 30, 1934.

MISSOURI: Although various measures concerning utilities were considered at a recent session of the legislature, none were adopted. The Buford Bill, which would have abolished the Public Service Commission, was vetoed and another bill, designed to reorganize it, failed. An antimerchandising bill and another which proposed a tax of one mill per kilowatt hour generated, also were among those which failed to pass. The commission is regarded as fair and is also an aggressive and active body. The Union Electric Light and Power Company recently granted a substantial rate reduction which was favorably received and in general the situation is one to inspire investment confidence. There is no tax on utility operations and the legislature does not meet again until 1935.

MONTANA: There appears to be very little evidence of active antiutility sentiment in this state. The Board of Railroad Commissioners and Public Service Commission has control over the utilities, but its problems evidently are not great, for the state has only one large utility company. The copper mining companies are influential and may be expected to oppose anything of such character because of their obvious community of interest. The legislature will not meet again until 1935.

NEBRASKA: The policy of this state towards public utilities is very much the same as that of Senator George W. Norris, who is an outspoken advocate of government ownership. Various measures passed in the state legislature have encouraged municipal construction or acquisition of properties, and these laws have been upheld in the courts. Curiously enough, the State Railway Commission does not have control over gas and electric rates and these are, therefore, left to the cities and to the companies for settlement. A tax of 2 per cent of gross from domestic and commercial sales and 1 per cent of gross from industrial sales of electricity is in effect. In general it is believed that surrender of operations of private utilities to municipalities may gain some headway over the course of the next few years, although the financial plight of most community governments stands in the way at present.

NEVADA: Although various measures aimed at the utility companies were introduced in the last legislature, including one giving the Public Service Commission the right to declare an emergency at any time, they failed and the opportunity to advance such bills will not be available again until 1935, unless a special session is called. A tax of 2 per cent of gross has been in force for some time. The possibility of some rate reductions is anticipated but, on the whole, the state is quiescent from a utility standpoint.

NEW HAMPSHIRE: The attitude of this state towards public utility matters is clearly shown by the action of its commission regarding the NRA codes, for it has, as it were, taken the utilities under its protection and refused to permit them to subscribe to any policies which would result in increasing their expenses. Indirectly it has thus recognized the relationships of codes and rates, which so many other official bodies appear prone to ignore. Recent laws passed by the legislature were designed to strengthen the hand of the commission so as to control the relationships between operating and holding companies. No more drastic measures were contemplated and it is doubtful if they will materialize, in the near term. The legislature will not meet again (unless a special session is called) until 1935. There is no tax on utility operations.

NEW JERSEY: This state is essentially conservative, and although an investigation of public utility rates is under way, any action which may be taken is unlikely to be particularly detrimental to the interests of private

capital. The Board of Public Utility Commissioners is generally regarded as a fair-minded body and it has not thus far done anything drastic. At present the Public Service Corporation, which eclipses all other utility companies within the state, has stated that it is prepared to resist further rate reductions because of prospective increases in costs; likewise it has always been able to use as an argument for the maintenance of present rate schedules the fact that it is conducting an extensive transportation system at practically no profit. Utility companies have paid franchise taxes of 5 per cent on gross receipts, from traction, and gas and electric operations for some time in addition to a further assessment determined by the State Tax Department.

NEW MEXICO: The State Corporation Commission has jurisdiction over electric and gas rates in localities of less than 10,000 population. Utilities do not operate there on a large scale, hence whatever the policies which may prevail, they are not of particular importance from the viewpoint of the larger question. Nothing has come to light which would indicate that any particularly strong antiutility sentiment prevails. There is no tax on utility operations, although one may be levied if a special session of the legislature is called.

NEW YORK: Many attempts have been made to embarrass the privately owned utility companies in this state and there is at all times an abundance of antiutility sentiment which is more or less reflected in the attitude of the state administration. Public development of water power has been advocated by former Governors Smith and Roosevelt and similar policies are being followed by Governor Lehman. Under Governor (now President) Roosevelt's administration the Power Authority of New York was formed. This Power Authority (of which the present Tennessee Valley Authority is a larger scale counterpart) has as its immediate objective the construction of a state-owned power project on the St. Lawrence river. Progress of late has been slow because a treaty with Canada is involved. It is interesting to note that although the state government has the distinct advantage over the Federal government in dealing with local utility matters, very few steps were taken during President Roosevelt's four years as governor, which could be termed destructive of private interests.

The New York Public Service Commission's recent order to the New York city electric companies to put emergency rates into effect has been enjoined and the Public Service Commission itself has admitted that it probably cannot be enforced. In this connection it is recalled that some time ago the New York city companies successfully contested the constitutionality of the so-called "Dollar Gas Law," passed by the state legislature. The governor's attempts to have laws passed which would strengthen the hand of the Public Service Commission in various respects and which would permit the cost of rate investigations to be charged to the companies concerned were defeated, owing

to other political situations in which they were involved. Probably they will be introduced again and eventually they may pass. No tax is levied on utility operations in this state and the companies operating there continue to be among the strongest to be found in any section.

NORTH CAROLINA: This year the former tax of 5 per cent of gross from utility operations was raised to 6 per cent, reflecting the need of the state for additional revenue. The state Corporation Commission has jurisdiction over utility rates but does not appear to be causing the companies much trouble. The Duke interests, which control the Duke Power Company, one of the most important companies, are influential.

NORTH DAKOTA: This state levies a tax of 1 per cent on gross revenues from industrial sales and 2 per cent on other types of business as well as a tax of 12 per cent on the gross earnings of electric, gas, and steam heating companies. It is not an important state from an operating standpoint, however, and the tax is mainly a reflection of its dire need for additional revenues. The Board of Railroad Commissioners has full power over utility rates.

OHIO: As result of the depression which has hit many Ohio districts hard there appears, at the moment, to be an unusual amount of discontent with utility rates and management; likewise there appears to be considerable agitation for municipal ownership. Many cities have home-rule provisions which give them control over rates and in such instances the commission constitutes a sort of court of appeals. This year the state raised the former 1.35 per cent tax on gross to 2.35 per cent, which rate will remain in force for a limited period for poor relief, but the governor recently abandoned the idea of increasing it further. Unusual decisions can be expected from both the commission and the courts, and in general Ohio may be said to present a situation which always has the possibility of causing privately owned utilities some trouble; these possibilities have been strengthened by the depression and may subside with recovery and better times. The legislature will not meet again until 1935 unless called for a special session.

OKLAHOMA: Utilities in this state are under the jurisdiction of the Corporation Commission, which has full powers. This year this state put into effect a 1 per cent general sales tax which applies to domestic and commercial sales of electricity, gas, telephone, and telegraph companies. The commission is energetic and there have been numerous rate reductions. The famous governor "Alfalfa Bill" of this state is obviously a "people's governor," and he is inclined to take any measures which will promote popular acclaim but he has a substantial financial problem on his hands and is reluctant to allow any unusual expenditures such as might be caused by a statewide rate reduction.

OREGON: Conditions in Oregon are not such as to inspire confidence in private utility investment. This state,

and the state of Washington, have always been marked by advanced if not socialistic views with respect to various matters, of which the operation of public utility services are one. Exclusive franchises are not granted and competition abounds. Lately the state abolished its utility commission of three members and delegated its functions to a single commissioner, Charles M. Thomas, who professes to favor municipal operation and in general may be said to be an opponent of the privately owned companies. He has broad powers, including the right to disapprove rates, but he has complained that the last legislature emasculated a bill which would have given him absolute power over the business. Some of his decisions have lately met opposition and are to be taken to court. The legislature will not meet again until 1935, but at its last session it passed a bill authorizing the appointment of a state power commission (somewhat along the lines of the Hydro-Electric Power Commission of Ontario) which is to study into the matter of developing a state power system; it has also indicated that it will coöperate with the Federal government in distributing the power to be developed at the Grand Coulee project, which, incidentally, is expected to create a substantially larger excess of generating capacity than now exists. A tax of 2 per cent on gross from all utility services which was subjected to popular vote on July 21st, was turned down.

PENNSYLVANIA: This commonwealth has recently witnessed the culmination of a protracted fight between Governor Pinchot, who is an avowed opponent of the utilities, and the old Public Service Commission. The governor won, and there has been a complete change of personnel of the commission. Doubt as to the continuation in office of Governor Pinchot indicates that some of his extreme policies may not be consummated, for he is strongly opposed in the state legislature. Generally speaking the latter is conservative and no measures likely to put the utilities in an embarrassing position financially have been passed. A very beneficial law, giving the commission power over such phases of the utility business as the issuance of securities and the loaning of money, was adopted. No special taxes have been levied on the utilities; an old tax of $\frac{1}{8}$ of 1 per cent is in effect. Generally speaking, while the new commission probably will adopt a policy of closer supervision of the utility business it is believed that the conservative policies usually adopted in this state will continue to prevail, despite various indications to the contrary.

RHODE ISLAND: This state reflects the characteristically conservative policies of the New England district and it is believed that there is little or no intent on the part of the state government or of the Public Utilities Commission to adopt extreme measures. Communities may levy a tax of 5 cents on each monthly bill of $3 or less and 10 cents on bills of over $3. There are no other special taxes.

SOUTH CAROLINA: The Railroad Commission, which has jurisdiction

over public utility matters, has had the rates charged by various companies under investigation for several months; it already has made some adjustments and may take further action. The state levies a tax of 0.5 mills per kilowatt hour generated, for revenue purposes. Unless a special session is called the legislature will not meet again until 1935.

SOUTH DAKOTA: This state exacts a tax of 1 per cent of gross revenues from all utility services under a general income tax law. The authority of the utility commissioner does not extend to electric and gas companies; furthermore, as the state is primarily an agricultural territory, utility matters are not particularly prominent in its affairs. Some rate reductions were granted recently by one local company.

TENNESSEE: The state of Tennessee generally is much interested in the Federal development of the Tennessee Valley and inclined to sympathize with its purpose; nevertheless so far as the private utilities within the state are concerned it has taken no steps which are significant of a socialistic attitude. The Railroad and Public Utilities Commission is regarded as fair minded. No tax has been placed on utility operations and the legislature is not scheduled to meet in regular session again until 1935.

TEXAS: The Texas Railroad Commission has no jurisdiction over public utility companies with the exception of natural gas enterprises, and although the utilities operating there have endeavored to get a commission set up in order to have some central authority which might pass on disputes, bills to create such a body have consistently failed. There is no record of any special taxation on utility operations and a regular meeting of the legislature is not due until 1935.

UTAH: The Public Utilities Commission has complete control over rates and under its jurisdiction some rates have been lowered during the past year or so and some more reductions may be in prospect. There is said to be a tax of $\frac{3}{4}$ of 1 per cent of gross on domestic and commercial sales, effective from May 31, 1933, to April 1, 1935, which can be passed on to the consumer.

VERMONT: So far as is known no program which is likely to prove upsetting to private investment in operating utility properties in this state is contemplated, and the legislature is not scheduled to meet again until 1935. The principal objection of the Public Service Commission has been the matter of outside control of the operating units under its jurisdiction, but the instances are few and the situation, in this respect has been relieved considerably of late. There is a tax of 0.5 mills per kilowatt hour generated.

VIRGINIA: Some question has arisen as to the justice of the rates charged in this state and the State Corporation Commission has an investigation under way. A tax of $1\frac{1}{3}$ per cent of gross has been in effect for some time. Utility matters did not

come up at the special session of the assembly which met in August to provide for a repeal vote, and although that body meets again in 1934 it is not expected to go to extremes, although an increase in the tax for the purpose of raising state revenues is always possible. There has been some agitation for municipal ownership but not in important districts. Generally speaking the situation is one to inspire reasonable confidence in the minds of investors.

WASHINGTON: This state, like Oregon, is proving a difficult one from a public utility standpoint. As in Oregon, exclusive franchises are not granted, there is considerable competition and the authorities are prone to favor municipal ownership. Seattle and Tacoma have municipal plants; the former's attempt to run its traction system has, however, been a failure from a financial standpoint although this cannot be blamed on the city management alone. The Department of Public Works has broad powers, especially in regard to rates, and it is inclined to reflect the general sentiment which is opposed to the private companies. The state proposes to set up a power district, similar to that which already has been created in Oregon, which will attempt to coördinate public generating and distributing facilities. A measure, known as the Bone Bill, which would give municipalities the power to sell energy beyond their corporate limits, was adopted by the last legislature, but a formal objection to its adoption was filed and it now goes before the public in a referendum vote in November, 1934. A tax of 3 per cent of gross revenues from electricity, and 2 per cent from gas is in effect until July 1, 1935. The attempt of the city of Spokane to levy a selective occupational tax on utility companies operating within its limits is to be resisted. The legislature is not to meet again until January, 1935.

WEST VIRGINIA: This state has rather radical tendencies and sentiment; in general it appears to be opposed to the public utility interests. In the last session a special committee made an investigation of the public utility business and, as a result, heavy taxes were levied amounting to 4 per cent on domestic and commercial business, 3 per cent on electric revenues from other sources, the same amount on revenues from the sale of natural gas, and 2 per cent on revenues from other sources. The governor of the state is regarded as able, as is his latest appointment to the Public Service Commission, and the utility companies generally believe that they may expect fair play, even though certain members of the legislature continue efforts to stir up trouble. The legislature is not scheduled to meet again until 1935 although a special session may be called earlier in which case there may be some further attacks on the utilities.

WISCONSIN: This state has an extremely aggressive Public Service Commission, of which Mr. David E. Lilienthal, now one of the Commissioners of the Tennessee Valley Authority, was until recently a member. The commission consistently takes an

advanced viewpoint, usually on firm ground, however, and in general it may be said to be a leader in that direction. It is not easy with the companies nor with the municipal utilities under its jurisdiction, but it is fair and its rulings usually take into consideration the necessity for preserving a sound financial position. In the state government the La Follette influence, which was quite radical, is on the wane and a somewhat more conservative viewpoint is beginning to prevail. Many bills on utility subjects were introduced during the last session of the legislature but most of them, including several which would have levied taxes on utility operations and one which would have removed municipal utilities from under the commission's jurisdiction, failed to pass. In general, while Wisconsin is likely to cause investors in public utility securities many a scare, it nevertheless does not present an alarming picture and the companies operating in that state appear to be in sound shape and likely to continue so.

WYOMING: There is little interest in public utility matters in this state, owing to the fact that it is sparsely populated and has no important consuming centers. There is a Public Service Commission with full authority; the legislature does not meet again in a regular session until 1935 and there is no record of any special utility tax.

DISTRICT OF COLUMBIA: Public utility companies operating in the District come under the immediate jurisdiction of the Public Utilities Commission and ultimately the Congress. Despite the fact that control by the latter would appear to make the District an experimental laboratory for whatever schemes that body might have in mind with respect to utility control, the fact remains that utilities there have not encountered any special difficulties in operating profitably and maintaining sound financial positions. Low rates have allowed the electric company to avoid trouble and recent activities of the Commission have had to do with the gas, traction, and telephone companies. A tax of 4 per cent of gross has been levied for some time in lieu of other taxes.

That Which Seems New to Us May Really Be Quite Old

IN 1683 an extraordinary series of occurrences grew out of the low price of tobacco. Many people signed petitions for a cessation of planting for one year for the purpose of increasing the price. As the request was not granted, they banded themselves together and went through the country destroying tobacco plants wherever found. The evil reached such proportions that in April, 1684, the Assembly passed a law declaring that these malefactors had passed beyond the bounds of riot, and that their aim was the subversion of the government. It was enacted that if any persons, to the number of eight or more, should go about destroying tobacco plants, they should be adjudged traitors and suffer death.

—THE STORY OF MONEY
By Norman Angell

COMMON FALLACIES ABOUT

The "Average Cost" of Distributing Power

PART I

During the ensuing months argument will be rife concerning one of the most highly controversial topics in the entire realm of rate regulation—the costs of distributing electric power. Already the Federal Power Commission has begun an investigation for which $400,000 has been provided. In view of the fact that this subject is of vital concern not only to the power industry but also to the government-owned power projects, and to the regulatory commissions, PUBLIC UTILITIES FORTNIGHTLY will publish a series of articles, written by the foremost authorities, that will undertake to present figures, facts, and opinions about little-understood questions in terms that the average business man can understand.

BY HUDSON W. REED

WHAT price kilowatt hours? The average domestic consumer does not know and probably cares less—he is interested more in the total cost of his electric service than in a unit cost which he does not understand.

The general public is constantly being advised that the wide spread between the cost per kilowatt hour for domestic lighting and wholesale power may not be altogether equitable. It has been told that the power industry knows nothing about the cost of distribution. It has been advised that the utilities purposely know nothing about these costs in order that they may better overcharge their ratepayers.

As the domestic users represent twenty million citizens, and are thus representative of the largest group of consumers, it is but natural that political expediency would dictate that they be told they are the class that is overcharged—not so much as to the amount of the monthly service bill, but overcharged on each elusive kilowatt hour used.

Notwithstanding the increase in the consumption of the domestic consumers during the past few years—a highly improbable condition were the service improperly priced—Mr. Domestic Consumer has been further erroneously informed that were the costs of distributing electricity known, domestic service rates would be drastically reduced. The assertion has often been made that distribution cost is not known or disclosed by utilities.

In an effort to substantiate these claims, considerable pressure has been brought to bear on utility management for comparative and easily understandable costs of electric service. Unfortunately, distributing costs between companies are not comparable, even to the limited extent to which generation costs may fairly be compared. This fact probably gives rise to the erroneous belief that distribution costs are not available because the accounting methods used are either unduly complicated or woefully inadequate.

The consistent propaganda for the simplification and amplification of this highly technical subject has, however, borne fruit in a multiplicity of suggestions offered for the solution of the problem. The plan which has received the most recent publicity recommends the use of our old friend "average cost." This impractical and often discarded theory of cost-keeping has been resurrected once more, and is now introduced to the public under the *nom de guerre* of "Scientific Cost Finding for the Distribution of Electricity."

Highly enthused over this archaic method for the determination of the cost of distributing electricity, some utility critics believe that the problem of costs of electric service has been placed on a nationally standardized basis. One prominent utility publicist informed his readers in all seriousness that through "average costs," "rents are being torn in the closely webbed veil of secrecy or mystery which for years has shrouded the cost of distribution in the field of electric power." That the figures used in the "average cost" computations were obtained from the yearly reports filed by the electric utilities with state regulatory bodies, and that these reports have always been available to the interested critic, was probably never taken into consideration when this startling statement was made.

It is quite difficult to understand just how "average cost," which is by nature the antithesis of scientific cost finding, can be accepted by either engineers or accountants as a mode of arriving at a national standard of cost by which the fairness of the rates of each individual electric company may be measured.

Neither is it easily understood how "average cost," arrived at by including certain cost components that vary as much as five to one between individual companies, can be used to support the claim that the residential customer is overcharged.

The much publicised statement that residential customers are overcharged "several hundred millions of dollars annually" is rather visionary if it is based upon "average cost" figures. Statements of this nature probably result from a lack of understanding of the cost elements of electric service; for no other reason could so many conclusions, incompatible with actual conditions, be arrived at by men of integrity.

Facts alone should be the basis of the scientific determination of any cost, for facts alone can be proven. The cost of distributing electricity should then be based upon facts—not averages, not guesses, nor assumptions. If, after arriving at fair and impartial actual costs, it is found impracticable to use them unqualifiedly

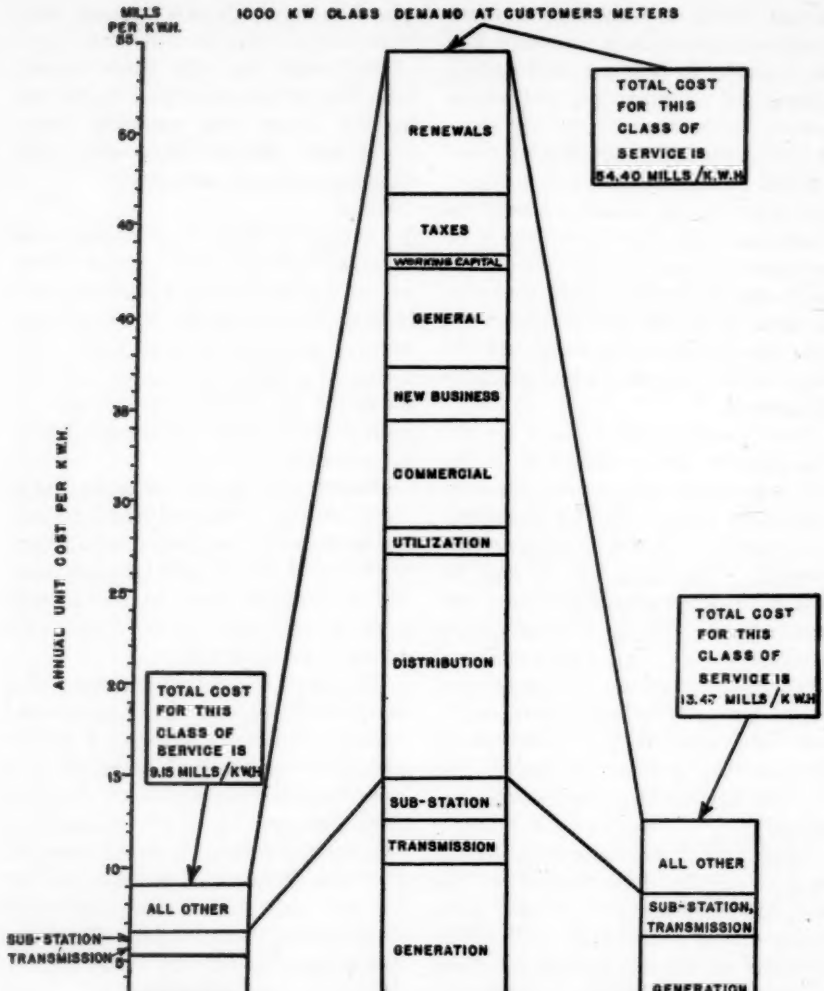


Illustration of Annual Unit Cost (Mills per Kilowatt Hour) for Domestic Service, as Compared with Power Service

as a basis for rates, the necessary modifications can then be made to the rates with a complete understanding of the problem.

WHAT, then, are the facts concerning this problem?

First; let it be stated that there is no mystery or camouflage concerning the cost of distributing electricity. Every dollar spent must be accounted for, whether it be for labor, material, taxes, or return on investment. Reports showing these expenditures are filed with the various state regulatory bodies. If the utility accountants are incapable of computing their costs, then the public accountants who are employed to audit these accounts, and the accountants and engineers employed by the regulatory bodies, are likewise inefficient. With so much at stake, it is inconceivable that with this three-way check any costs are withheld or distorted. It is likewise inconceivable that all of the accountants and engineers associated with utility operation are either knaves or fools.

The simple truth of the matter is that nothing is concealed nor misstated; the difficulty lies in presenting the facts in a manner that can be understood by Mr. Average Citizen and by those engineers who are not familiar with the practical and technical conditions underlying the problem.

Second; the utilities know and understand their costs equally as well, or better, than industry in general. Unfortunately, the many dissimilar conditions in the various communities served, do not as a rule permit comparable costs. Any attempt made to average these costs to obtain a general standard must necessarily violate every principle of scientific cost accounting.

Third; utility cost accounting practice does vary to a certain degree from the cost accounting practice followed by many industrial and commercial companies. Because the nature of the business is more intricate and technical, cost accounting for electric utilities must itself be more intricate and precise. On the other hand, in manufacturing plants, cost accounting is arbitrary to the extreme; here market and competitive conditions are the governing factors. The latitude afforded to the industrialists of setting up an accounting practice best suited to their individual requirements, is not permitted by the classification of accounts prescribed by the state regulatory bodies for the utilities.

Fourth; it can be stated without equivocation that the lack of publicity given to utility cost accounting is not due to ignorance of costs, nor to the fear of what these costs may show, but because cost figures, without a complete understanding of conditions underlying them, would be meaningless.

The results derived from a scientific determination of the individual items of electric costs are so interrelated, that they lose their significance if considered independently.

To illustrate:

Investment costs for a utility with a large portion of its distribution lines underground, would be much higher, and the operating expenses much lower, than for a company of like size with an all-aerial system. It would be incorrect and unfair to use the operating costs of the first utility, and the investment costs of the second, in ar-

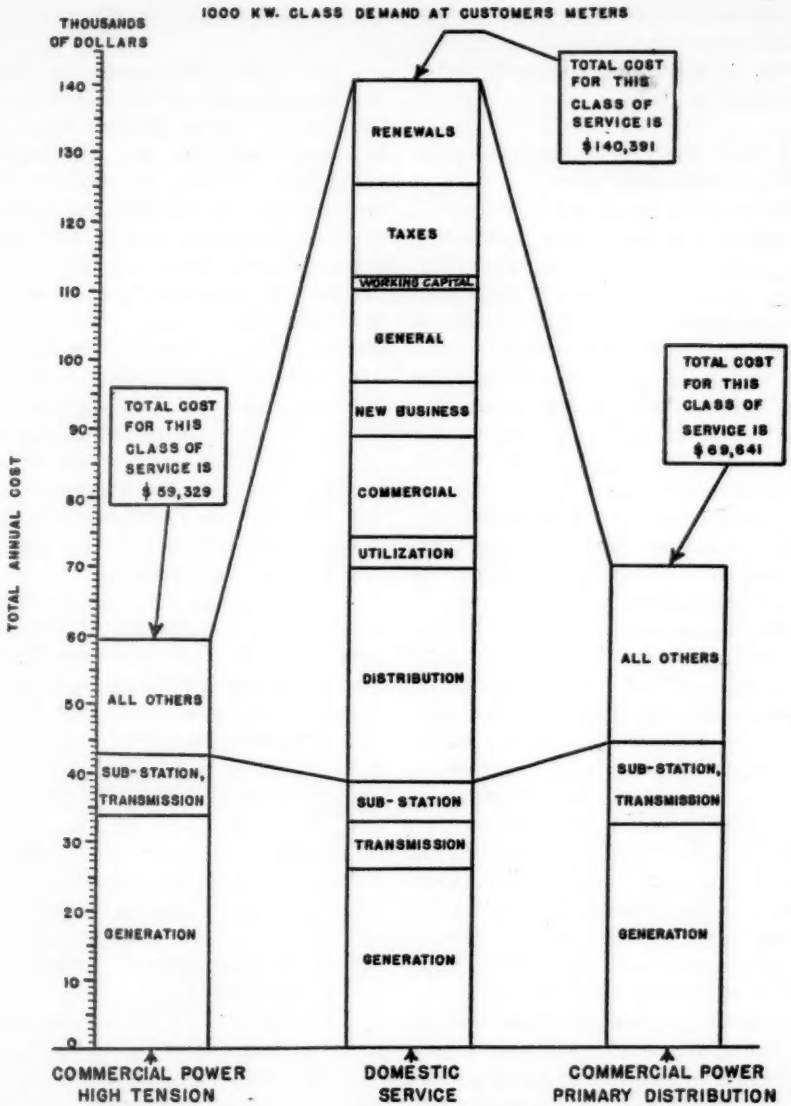


Illustration of Annual Total Costs of Comparable Loads for Domestic Service as Compared with Power Service

riving at average costs. This procedure is now recommended by the followers of the "average cost" plan. Is it scientific? Let the reader be the judge.

RATES that show a differential of from five to one between the domestic and the power customer, are frequently attributed to the absence or suppression of distribution cost data. Nothing could be further from the truth.

I freely admit that this differential may not always be based on the exact cost of service. On the contrary, in many instances, domestic customers should be charged ten times as much per kilowatt hour as the power user, if actual cost is the guiding factor.

Utilities are not permitted to charge the full cost of service to some of the individual domestic customers. It is generally known that a loss is incurred for a substantial portion of this class of consumers, but since it is not permissible to use to the fullest extent the scientific rates that have played such an important part in the development of the power load, it is difficult to correct this condition.

To permit the domestic customer to understand the factors that control the differentials in the cost of service, an analysis has been made of the facilities required, and the use thereof by both power and domestic consumers.

Although this analysis represents the individual conclusions of the writer, the basic factors used are those arrived at after many years of careful research by a number of engineers and accountants well qualified for this work by both experience and training.

It should be understood, however, that although the figures used can be substantiated, electric utility costs may change somewhat from year to year, and further, that no attempt is made to establish either detail or overall costs that will be applicable to other companies.

It is unfortunate that the unit cost per kilowatt hour for electric service has been so greatly emphasized, since this figure has little significance. However, since this unit is the one most commonly used for cost comparisons, it will be used as the unit of cost measurement in this analysis.

I trust that the utility critics will agree with the technique I have used in arriving at the cost of electric service, even though it is quite doubtful if the conclusions reached in this analysis will coincide with many preconceived ideas of what these costs should be. Regardless of what they may show, I intend to deal with facts alone, and the resulting conclusions arrived at through a fact-finding analysis are given for the benefit of those interested in this important problem. A frank discussion on the subject may help to clear away some of the misunderstanding that now exists.

ASSUMING that electric utilities are operated in a reasonably efficient manner, domestic customers could be overcharged either on account of excessive earnings on the capital investment, or because of an unfair allocation of capital and operating costs. While the first charge has been made, regulatory authorities are in a position to protect the consumer against such a condition.

The predominant charge is not that all classes of service are overcharged,

but that the domestic customer is discriminated against so that attractive rates may be given to large power customers.

It is my purpose to prove to all fair-minded students of this problem that, based upon identical units of investment cost, direct operating charges, and an impartial allocation of joint operating expenses, the costs assigned to both power and domestic consumers are fair and equitable.

Further, it is my purpose to prove conclusively that the differential in cost per kilowatt hour is not due to unfair or inaccurate cost accounting, but to the difference in the cost of the facilities required, and the extent of the use of those facilities by each class of customer.

To do this it will be necessary to forget for the moment the bitter controversy that has surrounded the problem for the past few years; eliminate as much as possible its technical atmosphere; discard all poorly thought out, rule-of-thumb formulæ that have been advanced in a futile effort to set up comparable costs; and place the problem on the same practical basis as the ones faced by the manufacturer and distributor of any commodity.

For this purpose it will be necessary to set up the costs representative of companies which have to deal with all of the major phases pertaining to electrical operation—those with steam generation; with high-tension transmission lines used to tie in the generating plants and to deliver the current to the points of use; with both underground and aerial distribution; and with investments that have been made from time to time as further facilities were required for expansion, for improved service, and for new developments in the industry.

Conversely, it will be necessary to eliminate the municipal plant, which is not required to meet the present tax burden, nor to operate under the same restrictions as the privately owned company; the theoretical company that could be constructed at one time, thus avoiding the unforeseen dangers and the more costly piecemeal construction; the base load generating plant that is operated at full capacity throughout the day; and the exceptional company whose particular local conditions may exclude the competition of coal or gas.

I have set up for my analysis the costs of a company that must operate under normal conditions, and will determine from an engineering, as well as from an accounting point of view, the actual causes for the much discussed differential in those costs.

For my analysis I have chosen three classes of customers, each class including a sufficient number of consumers to create a total diversified class demand of 1,000 kilowatts at the consumers' meters. Starting with an identical demand at the meters, I will develop the investment required and the operating expenses incurred for the investment, and the customer costs incidental to each class of service. Identical conclusions, in so far as unit costs are concerned, would be reached by the use of the diversified demand of one consumer of each group. The variation in the total cost, however, would be so great that the comparison would be less significant.

The use of a diversified class demand of 1,000 kilowatts at the

consumers' meters will require:

1. *A domestic service* group comprised of 4,608 customers, served from the secondary distribution system. This group has an annual load factor of 29.4 per cent and an average individual maximum demand, after allowing for diversity, of .217 kilowatt at the customers' meters.

2. *A commercial power* group comprised of four customers served from the primary distribution system. This group has an annual load factor of 59 per cent and an individual diversified maximum demand of 250 kilowatts at the customers' meters.

3. *A commercial power* group comprised of two customers served from the high-tension lines. This group has an annual load factor of 74 per cent and an individual diversified maximum demand of 500 kilowatts at the customers' meters.

The charts on pages 518 and 520 show how both overall costs and unit costs will vary between these classes of service, depending upon the facilities used and the extent of their use. In a concluding instalment the details of these costs will be discussed and the supporting data presented for the benefit of the reader.

The second (and concluding) instalment of this article will appear in the coming issue of PUBLIC UTILITIES FORTNIGHTLY*—out November 9th.*

Facts Worth Noting

DURING the past twenty years, the cost of electricity to the domestic consumer has come down 36 per cent.

* *

THE use of radio receivers in taxicabs, as well as all equipment which is "not reasonably useful in taxicab service," has been forbidden by the Maryland commission.

* *

OF the 83,000,000,000 kilowatt hours of electricity produced in the United States in 1932, 41 per cent was produced by the use of water power and 59 per cent by the use of fuels.

* *

THE oldest telephone pole in the country is still doing service in Craigville, Massachusetts; it is one of the three poles left of the original line which ran from Boston to Hyannis.

* *

To determine how a friend has weathered the depression look him up in the telephone directory. If his name is still listed, then he has fared well; if his name is not listed, then perhaps he would have fared better if it were.

* *

STATISTICS compiled by an accident insurance company reveal that 227 American cities in 1932 decreased the number of fatal street accidents between 5 and 8 P. M. by improving the street lighting system—at a cost of 9 cents per inhabitant.

* *

A NEW low mark for average revenue from sales of electricity to domestic customers was established in the twelve months ending July 31, 1933. The power utilities received an average price of 5.55 cents a kilowatt hour, as compared to 5.63 cents received the previous year.

* *

THE nine important power plants on the Pacific Coast in 1932 generated a total of 3,171,430,719 kilowatt hours. The proposed Grand Caulee government power plant, it is estimated, will be able to generate about the same amount—thus doubling the electric power production of that area.

The Pending Conflict Between State and Federal Regulation

No. III: The Radio, Air, Motor, and Pipe-line Services

The first article of this series treated of the conflict between the state and the Federal government over the methods of accounting as applied to the telephone services. (See PUBLIC UTILITIES FORTNIGHTLY *of July 6, 1933.) The second article treated of the conflict in the regulation of the electric power utilities. (See the issue of October 12, 1933.)*

BY AARON HARDY ULM

IN August of this year, Colonel Thad H. Brown, a member of the Federal Radio Commission, left Washington "for an extensive trip in the field to obtain first-hand information." In the press release giving his plans, it was stated that he would spend a week in Texas and confer there with "government officials, especially district attorneys, regarding illegal operations of radio stations in that state." The Radio Commission had received reports "indicating forty-three 'air pirates' were operating in Texas, and the names of thirteen of these violators had been submitted to the Department of Justice for action."

The air pirates claim that they are within their legal rights so long as what they send forth does not go beyond the borders of the state. It seems that Texas is big enough for purely intrastate broadcasting to be practicable therein. The state has no law on the subject.

FEDERAL authorities hold and Federal statutes assume that the jurisdiction of the Federal government over radio broadcasting is exclusive. It is contended that intrastate broadcasting necessarily "interferes" with that of interstate kind and, therefore, must be under Federal control. This seems to involve the question of whether interstate commerce has inherent rights superior, instead of only equal, to those of commerce within a state.

The weight of legal opinion appears to be that natural conditions will determine the matter so far as radio is concerned. The nature of the ether is such that it is difficult to keep any

radio transmission within definite bounds. Separate regulation of intrastate and interstate broadcasting would result mostly in confusion. So far no state has tried to interfere with exclusive Federal regulation, and if the Texas air pirates plead state rights they will have to do it on their own account.

Yet issues may arise between state and Federal authority. The policing of the receiving end of radio has been left to the states—not because Federal authority admits any lack of regulatory rights but because principally it is the kind of "small stuff" which Uncle Sam likes to leave to the states. There are elements of potential conflict in that policing. Even broadcasting itself can constitute man-made trouble with radio reception and become a nuisance. The transmitting towers of many New York broadcasting stations are concentrated in an area across the Hudson in New Jersey; hence the latter state has set up a radio commission of its own to protect its people from the jangling effects of a congeries of high-powered stations close together. The state commission has handled the matter so far by peaceful means and the Federal Commission has coöperated freely with it. But in the situation are the makings of dramatic conflict.

THE question of whether an intrastate activity must yield to Federal control merely because it "interferes" with interstate activities arises in other fields. It is one of the big issues in the so-called New River power case.

In the New River Case the Federal Power Commission claims full jurisdiction over a hydroelectric power project on a stream which it held to benonnavigable. The chief basis of its claim is that "the interests of interstate and foreign commerce will be affected" by the project. This is because the water passing through the power plant ultimately flows through a stream that is navigable. The effects would be quite far removed from the project. So the state of Virginia (in which the project is situated) joins with the Appalachian Electric Power Company in contesting the matter. The ultimate decision of the courts probably will be basic as to several points of conflict between state and Federal authority.

ALL commerce is now so complex and interdependent that scarcely any intrastate item of it is without effect on interstate and foreign commerce. It has been held, for example, "that a spur track in an independent plant where practically all cars are moving in intrastate commerce is nevertheless a facility of interstate commerce because cars in interstate commerce may be moved over it. It has been held that a locomotive wholly within one state is a vehicle of interstate commerce because in the trains hauled by it are cars moving in interstate commerce. A connecting track between two roads even though used wholly for the interchange of cars in interstate commerce has been held a facility of interstate commerce."

Thus the question of state rights in the field of commerce tends to become one of expediency. Some students of the subject believe that the force of expediency will settle the question by bringing all regulation

The Regulation of All Public Service Transportation Awaits Federal Action

"THERE are so many confusing angles to the problem of regulating highway carriers that the solving of it by Federal law might require the assertion of exclusive Federal control of all motor vehicle carrying on main highways. Determined effort to crack this nut may await decision as to whether all public service transportation shall, or must, be coördinated under Federal control. If such coördination is established, it is likely to bring the regulating of highway, railway, airway, and waterway carrying within a single Federal establishment, perhaps through a Department of Transportation."

within the Federal fold. It already has caused substantially all regulation of railroads to pass into Federal hands.

In two of the newest spheres of commerce, the force of expediency has kept the issue from arising formidably. One, as we have seen, is that of radio. In recent years state regulatory officials have hardly mentioned radio when getting together to discuss common problems, one of which always is the "encroachment" of Federal authority upon their preserves. They still discuss aviation; but in that sphere state—Federal conflict is of the potential kind only. At the last meeting of the National Association of Railroad and Utilities Commissioners, a special committee reported in part as follows:

"On account of the public demand for speedier service across the continent for certain types of express, passenger, and mail, it is very doubtful if state regulatory bodies should or will ever have much to say respecting those (air) transport lines other than to administer so-called police powers of the respective states. The fact alone should stress the necessity and importance of uniformity in state and Federal rules of law."

Such uniformity is about all that state authorities have stood for so far as aviation regulation is concerned, and it means little more than state aid to the Federal government in enforcing the latter's rules. Most state laws on the subject follow Federal government practice. The state that has gone farthest, North Dakota, makes all Federal rules and regulations its own and even clothes Federal agents with state authority.

It has not been determined whether the Federal government can claim exclusive power to regulate air-carrying as it claims that right in the field of radio. This presents some very interesting questions. The legal status of the air as a means of conveyance is still largely undetermined.

PUBLIC regulation of both aviation and radio is moving along without much conflict between the state and Federal regulatory powers. They are followed by the regulation of food products, as set going a quarter of a century ago by the Federal Pure Food and Drugs Act. The Federal government, first to enter all of those fields in a thorough manner, is setting the pace and is doing the major part, with the states aiding more than sharing the job.

But the regulation of public highway carrying presents a picture of conflict that is largely peculiar to itself. In this country we have had no "king's highways" like those in lands where the main roads are keyed to national defense. By tradition, in this land of the free the public road is wholly a community, or, at most, a state institution. Until recent years American highways were kept up largely for local convenience only. But "ribbons of cement" stretching across the continent for the use of motor vehicles have wrought a mighty change in the perspective. With it comes a curious type of conflict in regulatory authority. So far it is a negative sort of conflict. It arises out of the fact that, as in the sphere of the electric and gas utilities engaged in interstate operations, there is a "no-man's" area of regulation in the field of the highways. Hence, the demand by the states that the Federal hand of control be used in wiping out that area.

The state demand for Federal regulation of interstate carrying on the highways arose because of the United States Supreme Court decisions in the Buck and Bush Cases. The rulings were to the effect that the states could not make use of certificates of convenience and necessity requirements to control motor bus and truck carrying across their borders. Since the rulings were made, the National Association of Railroad and Utilities Commissioners has urged Congress repeatedly to wipe out the "no-man's" area of nonregulation. The area is that between what the state's may do and what, in the absence of Federal laws on the subject, no authority may do by way of regulating interstate factors in motor transportation. At the last meeting of the association, a special committee reported in part as follows on the regulation of highways carrying:

> "It has been the opinion of this committee since its creation that full regulation should be provided for motor vehicles engaged in the rendering of public service of either passengers or freight upon the highways. As to interstate carriers, that regulation can be fully and effectively provided only by the Federal government. . . . It is the opinion of this committee that any hearing which may hereafter be held in either branch of Congress upon the subject matter of Federal motor vehicle legislation the representatives of this association should continue to advocate the enactment of such legislation to provide for the regulation of transportation for hire by motor vehicle of both passenger and freight."

CONGRESS as yet has shown no great desire to comply with this request of the state commissioners, though it has given the subject consideration. A reason for the hesitancy lies in the complex nature of the problem. There are so many confusing angles to it that the solving of it by Federal law might require the assertion of exclusive Federal control of all motor vehicle carrying on main highways. Determined effort to crack this nut may await decision as

to whether all public service transportation shall, or must, be coördinated under Federal control. If such coördination is established, it is likely to bring the regulating of highway, railway, airway, and waterway carrying within a single Federal establishment, perhaps through a Department of Transportation.

In recent decisions, the United States Supreme Court has narrowed the gap between state and no control of motor vehicle carrying. The court has held that a state's police powers may be used in limiting interstate transit on specific highways when the reason for such use is the promotion of public safety or the prevention of undue traffic congestion.

SOMETIMES, it would seem that state authorities move rather hastily in seeking the injection of Federal power into new spheres as a solution of regulatory dilemmas. Several years ago, for example, some of them belabored Congress with demands for Federal regulation of pipe lines used in carrying natural gas across state lines. The demands were made because of United States Supreme Court decisions indicating that the states could not deal with the factor of so-called "gate-rates" in passing on local retail rates. Officials of the state of Kansas were insistent that Congress step into the breach and close what seemed to be a gap like that in the field of highways carrying regulation. Senator Arthur Capper of Kansas pressed the matter in Congress. At its meeting in 1930 the National Association of Railroad and Utilities Commissioners became rather excited about it all. A special committee said in its report on the subject: "We think the necessity for Federal regulation of interstate carriers of natural gas is becoming greater every year."

Shortly thereafter the United States Supreme Court rendered decisions to the effect that state regulatory bodies might inquire into and pass on, with reference to intrastate rates, all relevant factors in interstate carrying of natural gas. The Kansas commission withdrew its demand for Federal interference and little has been heard of the matter since then.

At present there seems to be no focal point of conflict between state and Federal authority, or the non-exercise of the latter in affirmative ways, in the pipe-line sphere, the size and interstate phase of which has grown enormously in recent times. The factor of interstate carrying in that field is much like that of interstate transmission in the electric power sphere. So is the holding company factor, which is the subject of an elaborate factual inquiry now being made by a committee of Congress whose report is awaited with interest.

¶ "THE *policing of the receiving end of radio has been left to the states—not because Federal authority admits any lack of regulatory rights but because principally it is the kind of 'small stuff" which Uncle Sam likes to leave to the states.*"

THE conflict between the states and the Federal government has practically passed from the railroad sphere, long its principal quarter, because of the establishment of absolute Federal supremacy therein. In that sphere, however, much experimentation has been and is being made of coöperation as a device for dissolving conflict between state and Federal regulation.

Much apparent headway has been made with the coöperative device in the province of railroad regulation. But the headway is probably more apparent than real, for most of the seeming coöperation is scarcely more than state commissions being allowed to act as hearing agencies and, in some measure, advisers of the Interstate Commerce Commission.

"There can be no such thing as concurrent jurisdiction or even coöperation between the states and the Federal government on the subject of rate making," said Frank P. Morgan of the Alabama Public Service Commission in 1931.

PROBABLY the greatest easement of the state—Federal conflict in the future will come through the coöperation between state regulatory bodies in handling problems of actual and potential conflict between themselves—problems which hitherto have been left mostly to the Federal hand.

"It is in the field of coöperation and joint action that the states have most neglected their opportunities," says Hugh Langdon Elsbree in his book "Interstate Transmission of Electric Power."

Forthright coöperation among themselves is probably the only way by which the states can preserve whatever rights they feel that they should retain in the growing domain of regulation. In all likelihood, the field of electric power is the one as to which there will be the final test of whether they can coöperate successfully as to matters involving big issues in which the country as a whole is concerned. It is about the regulation of electric power that state rights are being fought for most determinedly by the states, the regulatory commissions of the states, and the affected industry.

But even the issue as to that is likely to turn ultimately on the question of expediency.

In Coming Issues of This Magazine—

What the Utilities May Expect from the Coming Congress

BY HAROLD BRAYMAN

WANTED—

A National Rate Policy Board for the Power Industry

BY FRANCIS X. WELCH

What Others Think

Will the Muscle Shoals Rates Be an Effective Governmental Yardstick?

THERE is an old story told of an ingenious Hebrew merchant who, in the course of his attempts to persuade a prospect to buy some wares from his East Side pushcart, sadly related how every object he had was being sold at a "heart-breaking sacrifice." A cap marked 75 cents had cost him a dollar. A clock tagged $1.50 had cost him $2, and so forth. The credulous customer was amazed but bewildered.

"But how on earth do you manage to make a living this way?"

"Vell you see," was the soothing reply, "at such low prices I sell so much merchandise it makes up the loss."

Since the Tennessee Valley Authority announced on September 14th that it would sell Muscle Shoals power to municipalities at 7 mills per kilowatt hour, and at the same time proposed to have these municipalities resell it through their distribution systems at rates for some classes of service as low as 4 mills an hour, the skeptical observer may have to be content with the Hebrew merchant's explanation that the municipalities will sell so much current at such prices that the loss will be wiped out. Of course, it has long been recognized that it is perfectly sound business for power plants to sell large blocs of surplus power under certain conditions at a price lower than the general average cost of production per kilowatt hour in order to derive some revenue from the operation of plant equipment not presently required for more profitable service. But the interesting feature of the Tennessee Valley 4-mill rate is that the government is not making the rate for itself—its own wholesale price to the municipality being fixed at 7 mills—but for its prospective wholesale customers—the municipalities. It recalls the gracious Chinese Emperor who offered Marco Polo a present of "three score of the brightest stars in the heavens."

Such, at least, seems to be the reaction of Charles S. Reed, New York consulting rate expert. Referring to the Tennessee Valley Authority's rate announcement, Mr. Reed stated:

> "The residential rate quoted in the article calls for all current in excess of 400 kilowatt hours at 4 mills per kilowatt hour. It is hard to see how the municipalities can buy at 7 mills and sell at 4 and make money. Four mills will not cover the residential cost of distribution even if the energy were free. In addition, a 4-mill rate would build up house heating by electricity, which is seasonal and has a very poor load factor. Mr. Lilienthal claims his figures include the equivalent of taxes on his production system, but he overlooks entirely the taxes to be paid on the distributing systems, which constitute the bulk of utility taxes."

CONTINUING on the subject of taxes, Mr. Reed found that Mr. Lilienthal's (director of the Tennessee Valley Authority) estimate of the average selling price to the ultimate residential consumer at 2 cents per kilowatt hour is impractical if taxes are to be honestly considered, since the taxes paid by utility companies in the South, as elsewhere, when applied to residential service are more than 2 cents per kilowatt hour. Mr. Reed also questions the soundness of Mr. Lilienthal's proposed rural minimum bill, pointing out that it makes a lot of difference where current is to be delivered, especially if the municipality has a small distribution system and it is forced to depend on a single transmission line for service. He observed that even the Ontario system had learned from experience that uniform

area-wide rate making is more ideal than practical. Mr. Reed's most pertinent observation was as follows:

> "It would be well to note that Mr. Lilienthal's jurisdiction stops with the 7-mill rate, which is no better than is already available in the territory. He is putting the municipal plants in the South 'on the spot,' for the savings he is offering in the cost of current are but a drop in the bucket compared to their loss in revenue on the rates he figures for them. Few of them will be able to survive on his rates, even if they pay no taxes."

THE statement of Mr. Reed as to Mr. Lilienthal's jurisdiction ending with the 7-mill rate is true in a legal sense. But there is a certain amount of "moral suasion" which the authority is in a position to exercise to see that municipalities accomplish the rates suggested by Mr. Lilienthal, or that some similar schedule is put into force. Legally and technically the power to fix rates of municipalities that may use Muscle Shoals current rests with the respective city councils or (as in the case of Indiana cities) with the state utilities commission. By his "suggested schedules," Mr. Lilienthal has to some extent shifted the burden of proof to these regulatory agencies, and public opinion on the subject, being what it is today, it is difficult to visualize a city council or state commission "raising the ante" very much over the pattern set by the Valley Authority.

Private power companies would probably be more comfortable if Mr. Lilienthal's rate-fixing authority ended morally as well as legally with the 7-mill wholesale rate to municipalities, because such a rate in itself does not present such formidable or revolutionary competition. As Mr. Reed pointed out, current is produced, even without the advantages of hydro-generation, in the city of New York at less than a cent and municipal plants in Los Angeles and Seattle have production costs within a mill of the 7-mill rate. Yet these plants, with no taxes to pay, find it necessary to charge much higher residential rates than those which Mr. Lilienthal suggests for municipalities using Muscle Shoals power supply. Therefore, it is reasonable to assume that if they were left to their own devices, these municipalities would fix rates comparable at least to those in Los Angeles and Seattle.

IN explaining more fully the rate schedule announcement of September 14th, Mr. Lilienthal made a statement on the following day which revealed in a very general way the structural base for the proposed charges. As to the Authority's own business of production and transmission of Muscle Shoals power (covered by the 7-mill rate), he stated:

> "The wholesale electric rates which the Authority announced yesterday, while strikingly low, cover all costs of furnishing service, and are based on the board's policy that Muscle Shoals shall be entirely self-supporting and 'bankable'; in other words, a business enterprise. The computations are based on the best available data and weeks of close study and analysis, and have been subjected to the criticism of recognized rate experts. The figures show that all costs of service are included, and, in addition, provision has been made for items of cost not actually incurred, such as taxes and interest, but which were nevertheless included in order to make fair comparison with privately operated utilities, for 'yardstick' purposes. The detailed figures and computations are necessarily lengthy and of a technical character. The methods of determining the cost are based on policies heretofore determined by the board."

Mr. Lilienthal claims that to the 5 per cent of operating revenues required as taxes for Alabama has been added "an additional percentage of gross revenue which will equal normal average percent of gross revenue which private electric utilities pay in taxes, local, state, and Federal." Mr. Lilienthal did not, however, indicate just how much the additional percentage might be. On the all important question of rate base, he gave as a reason for failure to base rates on an estimation of the "present value" of the Muscle Shoals plant as required by Congress, the lack of time. Incidentally, Mr. Lilienthal tells us that he used as a "basic figure the amount which a business man would be willing to put into a plant at Muscle Shoals,

based in part on the cost of similar construction work in recent times." Added to this, 25 per cent is thrown in for lagniappe so that the figure will be "conservatively high." Arriving at this rate base, Mr. Lilienthal tells us that the board then estimated what it would cost the government to secure that amount of capital for such purpose on the open money market. This was done not because it was necessary to provide any "return" for the Authority (since no obligation is imposed on it by Congress to pay any interest on the government's investment), but to "provide an unquestionably fair comparison with private operations." For the same reason the board's estimate left out enough margin in fixing the 7-mill rate to cover what a private company would or should set aside for retirement and depreciation expense. Mr. Lilienthal says that this margin of profit will go to amortize the entire investment so that the people will ultimately own their own plant clear of Treasury contributions and this use of revenues from the 7-mill rate will be like buying one's own home on the small monthly instalment plan instead of paying rent which would be the case if private companies were rendering the service. But again Mr. Lilienthal's statements are quite general. Details of just how much net earnings and depreciation amounts in dollars and cents will doubtless be forthcoming in the near future.

Of more interest, however, will be the details of the Authority's estimate of how the general average 2-cent rate should be a reasonable charge for the municipalities to make. On this subject, Mr. Lilienthal states:

> "The proposed rates to be charged the householder and farmer by the municipalities were similarly based upon estimated costs. A substantial and conservative spread between the price of transmitted current sold by the Authority and the price proposed to be charged the ultimate consumer was suggested."

Liberal publications were inclined to take Mr. Lilienthal's statement at its face value as a sincere attempt of a government agency to provide an honest yardstick to measure private rates. *The Knoxville (Tenn.) News-Sentinel* (Scripps-Howard) stated editorially:

> "Here then is that cheap government-generated, government-transmitted power that the proponents of Tennessee River power development have so long sought. Here is the yardstick by which private power costs and private power rates may be measured. No need longer to guess about the benefits, so far as rate structures are concerned, of government operation.
>
> "Place this power yardstick up against the rates charged in Knoxville, in Washington, in New York, in Denver, in Chicago, in St. Louis, and, according to the figures of Director Lilienthal, the result is proof that the TVA rates are lower.
>
> "TVA is determined no one shall be able successfully to contest its charges on the basis that they are possible because of government subsidy. The explanation that the wholesale rate will make the Shoals plant 'strictly self-supporting and self-liquidating' would have been sufficient. But TVA, fortunately, is meticulous about its plans; and like private power companies, and in the same relation, it intends to charge off proper costs of furnishing service, operation, maintenance, depreciation, taxes. It is also making provisions for reserves for interest and retirement of the Shoals investment."

It may be, however, that the *News-Sentinel's* declaration of cheap rates in Tennessee as an accomplished fact and a true yardstick is a little premature. At any rate, the proof of the pudding will be the eating thereof and the *New York Times* is somewhat skeptical. It stated editorially:

> "The Authority insists that its wholesale rates have been computed on a 'conservative basis,' to cover all the costs of furnishing the service, 'including operation, maintenance, depreciation, and overhead,' as well as a 'hypothetical' charge for interest and retirement. No details are given. Much will depend on what proportion of the capital investment the accountants are allowed to charge off to flood control, navigation, fertilizer, and national defense. It is extremely doubtful if the sum of the statutory payments to Alabama and Tennessee and the proposed 5 per cent of gross receipts set aside for a reserve will 'equal the average tax payment of private utility,' as Commissioner Lilienthal thinks. Apparently no allowance is being made for the difference between public and private financing charges, or for profits, or for the taxes

The Knoxville News-Sentinel

THE GOVERNMENT GIVES US A YARDSTICK

which the municipal plants escape. Without these the 'yardstick' is made of rubber. But it may serve to beat into submission an industry which seems to have been singled out as an exception to the current theories of fair competition."

The *Indianapolis* (*Ind.*) *News* was noncommittal but believes that the result of the experiments will be "enlightening":

"Since it is understood that the Muscle Shoals plant is to be run on a paying and not a philanthrophic basis, the experiment will no doubt be watched with close interest. It may set a standard by which the professions of private companies regarding electricity costs may be tested. The features of private plant operation that may be said to compel the charging of high rates are likely to be subjected to searching inquiry. Concrete experience of an agency acting in behalf of the public will be helpful in determining clearly the real facts and possibilities of the situation. Results should be helpful to Indiana consumers and enlightening to the state public service commission."

The *Moundsville* (*W. Va.*) *Journal* reminds us that the government as well as private business will be on trial. It states as follows:

"But we must remember that the adventure also puts the government on trial. If human welfare and comfort are increased, and if the blessing of light and power is more thoroughly and more economically diffused, the fact that private enterprise is denied the opportunity to exploit the people as a whole will be of scant importance.

"If, however, the thing degenerates into an auxiliary political machine as so many instrumentalities of presumed public service have done, we will be little better off for the experiment.

"Just now, when the motive of acquisitiveness is being subordinated, or at least when the pretense is being made that this is so, there will be a strong urge to make the enterprise serve its stated purpose. A fierce light beats on all sorts of activity and every industry and business is being examined rather searchingly, with an eye to what contribution it is making to the welfare of the people as a whole.

"Whether such a movement has gained momentum enough or will preserve it long enough to resist corruption remains to be seen."

HOWEVER, as the *New York Times* pointed out last August, a yardstick is rather flexible in these days of Einsteinian mathematics, and measures a little more than a yard or a little less than a yard depending on which way it is going. So with the power rate yardstick, much depends on whether you are in the old-fashioned business of making electricity and selling it for profit or whether you are out to lick the Power Trust. To some advocates of "rugged individualism," a yardstick would have to be inflated to the size of corporate "write ups" of the 1928 era to do justice to their "investments." To some public ownership advocates of the evangelical type, a yardstick is still a yardstick even when it is pickled in subsidy.

—F. X. W.

STATEMENT by Charles S. Reed. *Boston Evening Transcript.* September 16, 1933.

BASIS OF RATES ANNOUNCED. Press Release. Tennessee Valley Authority. September 15, 1933.

NEW DEAL IN POWER. Editorial. *The Knoxville News-Sentinel.* September 15, 1933.

AT MUSCLE SHOALS. Editorial. *New York Times.* September 16, 1933.

MUSCLE SHOALS RATES. Editorial. *Indianapolis News.* September 16, 1933.

POWER ON TRIAL. Editorial. *Moundsville Journal.*

Why Not Truth-in-Publicity?

THERE is a legend that a one-time advertising manager of a large department store, seeking store news, asked a department head what was on hand for immediate sales copy. The latter replied: "I've got 168 raincoats that aren't worth a damn, and I'm going to sell them for $1.68 each."

To the horror of the department head and the dismay of his superiors, the advertisement appeared in the morning's paper in just those words. Before any protests could be registered, however, curious buyers began to flock in to see this unusual merchandise that had been advertised so disparagingly and before noon the last of the lot had been sold.

Mr. Earnest Elmo Calkins, nationally known writer and advertising expert recalled the foregoing legend in his recent article on that subject in *The Rotarian.* According to Mr. Calkins advertising has turned the corner. It has seen the Light. With the agitation for "truth-in-securities" and "truth-in-prospectus" and with Congress passing laws designed to "make the seller beware," Mr. Calkins now feels that advertising is becoming infected with the veracity germ. He stated:

"Another portent which may foreshadow tremendous things in advertising is the advent of truth. Yes, dear reader, I mean exactly that. An experiment is being tried in New York which may prove a landmark in advertising history. For rugged and ruthless honesty in business announcements has been comparatively rare. There have been from time to time sporadic outbursts of frankness which have brought startling results."

The "experiment" referred to by Mr. Calkins is now being carried on by a

New York city department store which stated:

> "We believe it is time to take a revolutionary step, in line with the beliefs of the administration, and of the opinions of intelligent people everywhere. We believe that old-fashioned 'commercial truth' has no place in the New Deal. From now on, all our advertising (and every word told you by our salesmen or saleswomen) will be—
> "The truth, the whole truth, and nothing but the truth."

Since that forthright announcement the regular daily advertisements have contained such disarming paragraphs as the following:

> "We have taken the 243 accumulated rugs and slashed their prices for a one-day sell out. They're not all in the colors interior decorators choose. A few are unquestionably lemons. But the great majority are in good taste. . . ."
> "They're good towels. With reasonable use they ought to last a year. If you want towels to last two years we recommend 'Westpoint' made by Martex for 49 cents."

THERE are other advertisers who have joined in the New Deal. It may be a shock to some of the orthodox advertising men to learn that their former copy has not always been according to Hoyle or—George Washington. The fact, however, is that the so-called "commercial truth" has often been misleading—even calculated to mislead the great mass of buyers. Why, for instance, should "Hudson Seal" be called seal (when it isn't a seal at all) if it were not intended to mislead, some buyers at least, into a confused notion that it might be some kind of a seal. The same thing goes for a number of other "trade names."

Utility advertising copy has not offended in this manner particularly, but it has at times suffered from a state of obfuscation that might be viewed as indirect attempts to conceal. There may have been no such intention on the part of those who prepared such literature, but the general public is getting the habit of suspecting what it does not understand. The use of technical language in utility advertising may even appear to some suspicious customers to be an attempt to hide plain facts. George C. Whitwell, chairman of the sales committee of the Edison Electric Institute, has stated:

> "As short a time ago as five years practically all I ever heard, with some important exceptions, in connection with the selling of light was a conglomeration of words that largely revolved around lumens, foot-candles, kilowatt hours, and other similar terms with which the engineer and many utility employees delighted to conjure, and without which, and their knowledge of them, we would, indeed, be in a sorry state. The customer, however, wants good lighting or better lighting, or more profits or greater floor traffic, or impelling advertising or eyesight conservation, or the ability to play or watch at night games of his own choosing. Rarely does he care or know about lumens or watts or foot-candles.
> "With lean years and the falling off in sales of lighting and lighting equipment, the keener salesman, who has long known that most customers buy only results, has come into the lighting field and, increasingly during recent months, we have seen him selling the customer lighting results. Less and less of the customer's attention has been directed to the marvelous intricacies of equipment and methods."

MR. Calkins warns us that we must not be absolutely certain that from this day onward our advertising copy will be "debunked." He merely tells us to watch these developments. They may be of lasting significance.

> "At least two results should follow such a policy from the start. Immediately the advertising becomes more interesting to the reader, and reader confidence is greatly enhanced. Nothing so strengthens a statement as an apparently damaging admission.
> "Do not forget that this venture is still an experiment, to be judged by results, and also by the continued attitude of the store. How deep does it go? How permanent is it? Is it a sincere, enduring policy or a device to attract attention? If the former, it is of the utmost value to the future course of advertising."

Absolute simplicity and honesty in all utility publicity whether in paid advertising copy or in press statements would go a long way towards regaining public confidence in the utility industries—confidence which is sorely needed during these critical times. Not only the utilities but the state commissioners them-

selves, in the opinion of some of the commissions, might resolve to tell more truth, all the truth about commission regulation. This does not imply that state commissioners have not always told the public the truth. Their difficulty, if it can be called a difficulty, lies in the fact that they haven't told the public as much as they might in view of the attacks made on commission regulation.

H. Lester Hooker, president of the National Association of Railroad and Utilities Commissioners, and chairman of the Virginia Corporation Commission told the American Gas Association at its recent convention in Chicago that a little publicity by the state commissions concerning their activities is necessary to dissipate the false and slanderous criticisms that have been aimed at these regulatory bodies. Mr. Hooker declared that public distrust of the fairness of prevailing rates is due in large part to the fact that the public is wholly unacquainted with the methods by which the commissions work and the reasons upon which they arrive at their decisions.

Making it clear that he spoke as an individual commissioner and not as a spokesman for his associates in the national organization, Mr. Hooker said:

> "The most outspoken critics of prevailing rates may be determined to wreck the utilities, perhaps. The general public, however, I sincerely believe, is willing to 'live and let live'; it is willing to pay rates for the utility services it consumes sufficient under normal conditions to cover the operating expenses, taxes, and a fair return on the fair value of the property of the public service corporation rendering the service. Is this not the same principle which permeates all judicial rulings as to the determination of fair rates?"

In many cases the present process, Mr. Hooker said, does not answer the question in the public mind in the matter of variations in rates between nearby places. Neither does it answer the question as to whether or not the physical plant installed is intelligently planned or is the most efficient plant available, nor does it answer the public question as to whether or not the company is efficiently managed.

The public, he said, apparently does not intend to pay a rate based on plant valuations where the plant is not modern or is not efficient. Neither, he said, does the public intend to pay a rate that is higher than neighboring rates because of inefficient or excessively costly management.

Mr. Hooker said rate investigations must deal not only with the actual determination of fair rates, but, in addition, it must be so designed as to interpret to the public why the rates fixed are fair and how their fairness has been determined.

It is possible, Mr. Hooker said, that the future of privately owned public utilities might rest on just such a type of investigation. It may be, he said, if the commissions in the various states do not interpret their findings to the general public in an adequate way, that, in many localities, experiments will be started in publicly owned plants that will destroy literally millions of dollars of useful property that does not serve the public as economically as will the publicly owned plants.

—F. X. W.

ADVERTISING'S NEW RÔLES. By Earnest Elmo Calkins. The *Rotarian*. October, 1933.

CUSTOMERS WANT LIGHTING, NOT ENGINEERING. By George E. Whitwell. *Electrical World*. September 23, 1933.

UTILITY DECISION PUBLICITY URGED. *The Wall Street Journal*. September 28, 1933.

EXCERPTS *from the opinions in reports and addresses at the recent annual convention of the National Association of Railroad and Utilities Commissioners in Cincinnati, Ohio, will appear in the coming issue of* PUBLIC UTILITIES FORTNIGHTLY—*out November 9th.*

Position of the Connecticut Commission on the NRA Codes

IN the September 28th issue of PUBLIC UTILITIES FORTNIGHTLY at page 410, there was published a statement to the effect that the Connecticut commission had given advance notice to an electric utility company of that state that the commission would support the company in the latter's refusal to sign the NRA code adopted by the Edison Electric Institute. The basis for the statement was a news item appearing in the *Wall Street Journal* of August 17th. It appears, however, that the position of the Connecticut commission was misinterpreted. The true position and the only official position which the Connecticut commission so far has taken upon this matter is indicated in the press statement issued by the conference of New England commissioners last August in Boston, in which the Connecticut Public Utilities Commission and other state utility commissioners present concurred. The press statement was as follows:

> "It was the consensus of opinion of the commissioners present that the coöperation of the New England public utility regulatory bodies will be given the Federal government in its efforts toward industrial recovery. The commissions feel, however, that they have no authority to advise or direct the utilities under their jurisdiction as to what attitude they should take."

—J. T. F.

Intrastate Utilities and the NRA

THE reasons why utilities should or should not be regulated by the Federal government under the NRA codes have been pretty widely discussed on their economic and social merits, but comparatively little attention has been bestowed so far on the purely legal question of whether utilities are for the most part engaged in purely intrastate commerce so as to be beyond the constitutional power of the Federal government to regulate. For obvious reasons, principally those involving public relations, it is doubtful whether the utilities would raise such a purely legal defense if everyone else agreed that, on the merits of the question, utilities ought to be under the Blue Eagle. Nevertheless, as the studious hobo remarked while glancing over the list of income tax exemptions, "it's a fine thing to know what your rights are, even if it is only as a matter of historical interest."

Francis C. Wilson of the New Mexico Bar, addressing the Rocky Mountain Electrical Association, has given this question the benefit of his professional examination. He stated the problem as follows:

> "The power plant doing business wholly intrastate supplies a product which does not find its way into interstate channels of commerce. In the area served, the product is wholly consumed. Thus, there are no aspects of the industry in the manufacture nor yet in the marketing of electricity by the plants described which affect interstate commerce. But the claimed source of the power of Congress to pass the Recovery Act lies in the asserted existence of an emergency, and in the Commerce Clause of the Constitution—Congress shall have power 'to regulate commerce with foreign nations, and among the several states and with the Indian Tribes,' and 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'
>
> "It becomes pertinent to inquire, therefore, whether the power given by the Commerce Clause can be enlarged by the existence of a national emergency in peace times, to include the regulation of manufacture and of intrastate commerce, and specifically in the final analysis to set aside and nullify the cherished right of the state to regulate utilities confining their activities to an intrastate market."

SINCE the Constitution is the sole source of the Federal government's

power, Mr Wilson believes that no emergency can "call into life a power which has never lived." He cites further authority to show that no emergency, not even a state of war, can furnish a warrant of authority to Congress or to the President to supersede the Constitution. It is the supreme law of the land and the perpetual guardian of the liberties and rights of our people who ordained and established it for that purpose. Mr. Wilson concluded:

> "It is concluded that Congress under the Commerce Clause derives no power from the Constitution to impose regulations upon local electric light and power establishments. The proponents of the act both in Congress and out rely on the rate cases to sustain the power of Congress to pass the act. At the most, and giving to them every implication legitimately possible, the decisions in those cases do not go beyond holding that in sustaining the power of Congress under the Commerce Clause, discriminations brought about by differentials in rates intrastate and interstate resulting in burdens upon the latter can be equalized by the Interstate Commerce Commission or set aside by the courts so as to remove those burdens. The supremacy of the national government in the field of interstate commerce may not be weakened nor impaired by state regulation of intrastate commerce.
>
> "No one would now contend against the wisdom or validity of those decisions, but when it is attempted to extend them to the point of sustaining the Recovery Act as authorizing regulation of local trades and industries which do not engage in interstate commerce and whose activities do not intrude into that field, the effort appeals neither to reason nor logic. . . . No amount of sophistry nor professorial refinement of reasoning can alter those fundamentals or change their application. If it should become desirable to do so, the way is open by amendment to the Constitution in the manner and by the means in that instrument provided. It cannot be done by congressional or executive fiat—it should not be done by judicial legislation accomplished under the guise of construction."
>
> —F. X. W.

APPLICATION OF THE NATIONAL INDUSTRIAL RECOVERY ACT TO LOCAL ESTABLISHMENTS DOING INTRASTATE BUSINESS. Address by Francis C. Wilson before the Rocky Mountain Electrical Association. *The United States Law Weekly.* October 3, 1933.

What Must the Utilities Do to Be Saved?

No amount of Couèism, Mental Force, Moral Suasion, Christian Science, or other forms of managed mental attitude can prevail to save the life of one who has really taken two grains of morphia, intravenously injected. No amount of courageous singing of that popular song, *"Who's Afraid of the Big Bad Wolf?"* would be much help to an unarmed and unhappy traveler pursued by a voracious pack. But the converse of the proposition is far from true. A man will run just as fast from a collie that he thinks is a wolf as he would if it were actually a wolf, and people have been known to die from sheer fright when under the erroneous impression that they have been poisoned.

This is the result of the human equation which so often intrudes itself in such a manner as to displace all careful calculations based on cold facts. It is especially true in the field of political economy. Sir Josiah Stamp tells us:

> "Integrally, what people think about facts, however wrong and misguided, is very often to be included in economic data and is very often more important in the long run than the study of things as they are. . . . If people have a misconceived notion of economic facts, that is just as important in economic data as the facts themselves."

Mr. E. M. Tharp, vice president of the Ohio Fuel Gas Company, of Columbus, Ohio, recently directed the attention of the annual convention of the American Gas Association to this point in emphasizing the importance of the human equation in rehabilitating the public relations of the utility industries, now in such sorry shape as the result of a combination of vitally adverse factors including taxation, political attacks, scandals, and the stress of hard times.

MR. Tharp believes that the utilities have overlooked the possibilities of this human equation, while their critics have capitalized it to the utmost. He states:

"Those who for political or other reasons have developed opposition to the best interests of the gas industry, have been able to attract attention, to create agitation and to secure votes. They have been able to do this because they formulated a definite message. They have seen to it that this message was of personal interest to the public and they have carried out a vigorous and systematic program of placing this message before the public.

"Until very recent years the dominating problems of the industry were financial and engineering and called for an exact-minded type of leadership that reasoned from cold facts and followed a technology unrelated to the vagaries of human nature. Since the public has come to manifest discontent and misconception of the purposes and values of the service, the effort has been made to meet this situation with rationalized exactitude and to set up a public relations machinery as a feature of the business. Volumes of reports, covering every phase and application of the public relations idea, have been presented at these conventions. Employees have been schooled in customer contacts, in being considerate and helpful and pleasant. All of this has served to improve the human element in the service and has been effective in creating a more favorable impression of the gas company organization. There has been nothing done in the development of our industry of a more essential character.

. . .

"The only persons who have been discussing this question of the value of gas service in the language of the consumer are the politicians. We all know that what they have said about it has done us no good. Whenever we have taken occasion to meet this situation, we have followed one of two courses of action; either we talked a lot about our investments and costs, about depreciation and amortization, or we proceeded into litigation. The more we have proceeded in either of these two courses, the more misunderstood we became.

"Talking to gas users about the vast extent of plant and equipment, the huge investments, the tremendous costs, does not interest him much more than discussing the Einstein theory with him. The more we talk about costs, the more he is inclined to talk about costs, but they are not the same costs, and only serve to aggravate a negative attitude. Have you ever read any consumer literature about soap or shoes or socks or underwear that discussed costs? Do the coal dealers talk about costs? If they do, they are gas costs.

"The gas industry has done and is doing itself more damage by overlooking or disregarding the merchandising phases of its business than all the politicians in America have done. Before and after any of us are producers, engineers, lawyers, accountants, or just plain gas men, we are consumers and if we would take a leaf out of our own experience, we would know that basically the consumer demands the compliment of being sold. The human being in his capacity as a consumer is the unknown factor in our economic speculations. He does not yield himself to exact science or legal form or statistical calculation. He makes possible the volume production of one automobile one year and another the next. He is a Republican one time and a Democrat another. He is both reasonable and emotional; he is both thrifty and extravagant. He is not interested in understanding us. He demands that we understand him."

AND so Mr. Tharp proceeded to tell the gas men what, in his estimation, they must do to be saved. They must copy the methods of the successful manufacturers who have convinced the mass of the public that they must accept this brand or that brand to the exclusion of all "inferior and harmful substitutes" even though a chemical analysis might show the substitute to be just as good or better than the "brand" article. They must copy the methods of successful politicians who with smart ballyhoo campaigns have put across some of the more revolutionary political and economic ideas in a few months than have been accepted in decades of our national history. They must begin with themselves—with stout hearts and faith in their business—with adequate training of their personnel. And what if the utilities fail to do this? Mr. Tharp's prediction in this event is far from cheerful. He stated:

"When we take the attitude of constitutional rights out of the picture; when we stop being defensive; when we quit arguing matters of cost and investment with politicians; when we eliminate these things and substitute for them employee selling contacts with customers, and a liberal use of service literature and newspaper advertising, we will replace political attack with customer confidence and support. The politician is on our neck because we have allowed it to be a comfortable place for

him. Getting him off is not a day's job or a month's or even a year's. It is a proposition of consistent persistence. . . . The gas industry is on the threshold of a new era, if it accepts the challenge of merchandising. It totters at the edge of a precipice of grave difficulties and uncertainties if it denies this challenge."

FROM a radically different viewpoint comes the advice of Morris Llewellyn Cooke, trustee of the Power Authority of the State of New York. Mr. Cooke professes not to be an advocate of public ownership but a staunch friend of private ownership of utilities provided it is, in his estimation, "adequately regulated." Speaking of the electric utilities in particular, Mr. Cooke also tells us what they must do to be saved. His prescription is about exactly opposite to that of Mr. Tharp. Mr. Tharp wants more ballyhoo. Mr. Cooke would have none of it. He states in his recent contribution to *The New Republic:*

"The situation will grow worse as time advances. Amortization of public plants is a practice the public highly approves. In fact, while the refunding of publicly owned utility-plant obligations is all but unknown, with the private utility industry refunding is the rule. The taxpayers like to think of their industry as out of debt, especially as they know that this spells progressive reduction of rates.

"The industry must discard misleading propaganda. It must realize that anything it now says is suspect and that the money spent in spreading abroad misstatements of fact is largely wasted. It is vital that it cease attempting to utilize professional engineers and the professional engineering associations as mouthpieces for its propaganda. That the pressure brought by utility executives upon these associations has been and is effective cannot be denied and the public will not be slow in placing the blame where it belongs if the integrity of these professional organizations is destroyed."

Mr. Cooke also warns the industry to withdraw from any connection directly or indirectly with the publication of newspapers, textbooks, law reports, or with membership in civic organizations, such as chambers of commerce, Rotary and Kiwanis clubs, and so forth. It must consider itself at all times in "its true legal status," *i. e.*, a servant of the public operating by permission of the people. It must make haste to put its corporate house in order by eliminating financial and engineering abuses, including waste in management and engineering practice.

WHILE the industry should wholeheartedly accept public regulation, it should go farther and regulate itself, says Mr. Cooke. In this respect it has an opportunity to demonstrate the efficiency of private initiative so long extolled. But while the industry must observe its "true legal status" as to franchise rights, it must not urge "absurdly unfair claims," even though already established as legal rights. Legal precedent must be thrown out of the window in this respect; and, Constitution or no Constitution, the industry must abandon the theory of present fair value in the determination of the rate base for "whether the utilities like it or not, the prudent investment theory of capitalization must be put into force."

Mr. Cooke condemns the present "overbuilt" condition of the industry. It must recognize that "it is not sound policy to extend transmission lines into sections where, for example, local Diesel-engine plants can distribute current at less than cost to the utility." Where this has already been done, the existing investment must be written off and the further invasion of the legitimate Diesel-engine field must be abandoned. Mr. Cooke does not tell us whether this advice should hold good also for government power systems. Last but not least, the industry should make haste to coöperate in the movement to throw more light upon distribution costs and the standardization of accounting practices with regard to such costs.

—M. M.

EXECUTIVE RESPONSIBILITY FOR SALES PROMOTION. Address by E. M. Tharp before the Fifteenth Annual Convention of the American Gas Association. Chicago, Ill. September 25–29, 1933.

NOW IT'S UP TO THE POWER TRUST. By Morris Llewellyn Cooke. *The New Republic.* October 4, 1933.

The March of Events

Employment Problems at Muscle Shoals

COMPLAINTS are being registered with the Tennessee Valley Authority over the failure to employ a large number of men on the vast power and economic project, according to a Washington dispatch of September 30th to the *Wall Street Journal*. At the offices of the Tennessee Valley Authority, it was said about 200 employees have been taken on in addition to about 500 others inherited from the Army, which operated Muscle Shoals until the new agency took it over.

When this project was launched, four and a half months ago, it was accompanied by a glowing description of the new power age paradise which was to spring up. An area embracing some 6,000,000 persons was to be given new life. A planned social and economic rebirth, which would reëmploy 1,000,000 men, was heralded. Disappointment is now being registered. Senator Bachman and Representative McReynolds have been most outspoken. Senator McKellar (D.), of Tennessee, expressed the hope that the work would be started at an early date but said that he did not want to be too critical at this time.

In response to strenuous local agitation for the immediate construction of Dam No. 3 (Joe Wheeler) above Muscle Shoals, Chairman Arthur E. Morgan advised Secretary of the Interior Ickes that the Tennessee Valley Authority heartily approves the construction of Dam No. 3 as an emergency employment relief measure, on condition that it is built with public works money and not with Tennessee Valley Authority money, and that the carrying charges and construction cost shall not be charged to the Tennessee Valley Authority until the demand for power justifies the construction for that purpose. Pointing out that the dam is an integral part of the navigation program for the Tennessee river, Chairman Morgan emphasized the fact that there was some disadvantage to building the dam now when it will not come into full use at once. Although he conceded that this disadvantage may be outweighed by the great advantage of providing employment, and by favorable prevailing construction prices, it was necessary for the Tennessee Valley Authority to keep the necessary expenditures for purely emergency relief apart from necessary and warranted power construction outlay.

Alabama

Cities Study Proposed Municipal Power Plants

ALMOST a forgotten topic a year ago, municipal ownership now is a live issue in Alabama, with the Tennessee Valley Authority proposing to wholesale electric power from Muscle Shoals at extremely low rates. Already six of seven municipalities in which public operation has been submitted have voted for the plan. On October 9th Birmingham, the state's largest city and third ranking in the South, was to have voted on the question.

While in other cities, all small, electric power operation alone has been voted upon, Birmingham had a fourfold utility program—electric power, street railway, waterworks, and a central heating plant for the business district.

The program resulted from a combination of circumstances, including an attempt to secure lower electric rates, which resulted in approximate 20 per cent reduction, and the Muscle Shoals development. There is, however, strong opposition to the plan, so strong that two organizations have been formed to wage a campaign against ratification. The Birmingham Electric Company, which serves the city and operates the street railway, conducted an intensive advertising campaign, stressing its new low rate structure.

Paul G. Parsons, Birmingham attorney, headed the temporary organization advocating municipal ownership. He emphasized the cheap rates for residential power cited in the recent rate schedule proposed by the Tennessee Valley Authority and also the fact that such cheap electricity would induce greater industrial development in the city of Birmingham.

Dr. Sterling J. Foster, chairman of the association, opposed to municipal ownership,

claimed that it would result in increased taxation. Dr. Foster said the city's general credit would be pledged, and contended that the Tennessee Valley Authority rates make no provisions for profits to replace the taxes lost and to amortize the bonds which would be needed to purchase the electric plant.

California

San Francisco to Vote on Bond Issue November Seventh

With three members of the San Francisco board of supervisors serving notice that their approval was conditional, that body on September 29th voted 11 to 2 to submit to the people the city's $35,000,000 recovery construction program at the November election. Supervisor Franck R. Havenner, member of the state NRA board, announced that the Pacific Gas & Electric Company, and other interests opposed to the proposed $6,308,000 bond issue that would enable the city to begin distribution of Hetch Hetchy power under the city's recovery construction program, have protested against the project and have demanded a hearing before the state advisory board. The advisory board must, under rules from Washington, grant a hearing to opponents of any project. If the city of Los Angeles is represented and prepared it will have an immediate hearing, according to a statement by Supervisor Havenner.

Public ownership advocates campaigned for the November date. They argued that the opposition was fighting for postponement and a special election because they feared a showdown on the issue of municipal power distribution at the general election which would bring out a heavy vote. A small vote at a special election, according to municipal ownership advocates, would hurt the proposal because approval by two thirds of the voters was needed under the law.

Opponents of the measure, including the city chamber of commerce, explained that they did not want an election until NRA officials had passed upon the city's program. Three members of the council, however, voted for the resolution with the definite understanding that they would vote against its submission in November at a later meeting unless before October 16th the Federal government had indicated that it would approve the San Francisco recovery program .

Colorado

Denver Council Rejects Reduction Ordinance

The movement of Mayor George D. Begole, of Denver, for a reduction in natural gas rates, failed on September 18th when the city council refused to pass the rate reduction ordinance. The council, dubious of its authority to change utility rate schedules, refused to affirm the mayor's program. Councilman Rosenthal, who led the fight against the proposed ordinance, explained that a thorough investigation of the affairs of the Public Service Company which serves natural gas in the city of Denver should be conducted by experts to gather data in support of the proposed new rate ordinance before it is adopted. If the ordinance were passed now, Councilman Rosenthal said, the company probably would ignore the reduction and if the city tried to enforce it the company would go to court and obtain Federal restraining orders on grounds of confiscation. The councilman thought that these grounds would not only prevail in the court but that the city was not prepared at present to carry on a legal battle.

The proposed ordinance would have cut the $1.80 now charged against domestic consumption for the first 1,000 cubic feet of gas used per month to $1.25. The council again on September 25th refused to take action upon the proposed new rate schedule, and Chairman W. J. H. Doran, of the council's public utility committee, asserted that a thorough investigation and revaluation of the Public Service Company of Colorado's gas plant will be undertaken immediately. The fate of Mayor Begole's reduction ordinance rests on the result of this examination which will probably take several months to complete.

Connecticut

Truck, Trolley, and Steam Coördinated in Connecticut

THROUGH coördination of the facilities of the Connecticut Company's trolley express and the freight transportation facilities of the New England Transportation Company, the New Haven Railroad has been able during the past year to increase service to the shippers of Connecticut by furnishing pick-up-and-delivery service on an overnight basis to all points throughout the state. Prior to this arrangement, the trolley express furnished similar service only to those points that were reached by trolley lines, according to the *Transit Journal News.*

In the combination of services, the motor trucks are being used as feeders for the trolley as well as the railroad lines.

Delaware

Suit to Halt Associated System Planned

AN injunction against carrying out the proposed recapitalization plan of the Associated Gas & Electric System was asked in a bill of complaint filed in Chancery Court at Wilmington September 25th by Tessie Berwick, owner of $30,000 in debentures of the Associated Gas & Electric Company, a New York corporation. The company, the Associated Gas & Electric Corporation, past and present directors of the two, and the Associated Gas & Electric Securities Company, Inc., are named as defendants.

The bill of complaint alleges that, regardless of the involved financial difficulties in which the New York corporation and the system find themselves, and in disregard of the rights of the holders of the company's debentures, the corporation, the individual defendants, and the securities company have proposed that the system be recapitalized. To further the plan of recapitalization it is proposed that the Delaware company is to create new security issues. It is alleged that this proposal is illegal and that previous transfer of certain assets of the New York corporation to the Delaware corporation was illegal.

The court was asked to appoint a receiver or trustee to take charge of the securities of the Delaware company, which the complainant holds belong to the New York corporation, or to secure transfer of them.

District of Columbia

Municipal Power Plant Suggested

ESTABLISHMENT of a municipally owned power plant for the District of Columbia was recommended in a report made public on September 25th covering a technical study of the question by O. M. Rau, a consulting engineer commissioned for the purpose by the District commissioners at the instance of Congress. Mr. Rau estimated that a saving of $4,000,000 annually in the cost of electric power service in Washington if a municipal plant were built for the use of both the government and the public. He estimated that there would result an annual saving of $1,000,000 if a municipal plant were built only for use of government agencies.

The report is the result of an intensive study of the question since Mr. Rau was commissioned a year ago last July. His study is in addition to an earlier survey of the question made by Earl Barber, a New England engineer, who resigned a place on the public service commission of Massachusetts to conduct the District survey.

Major John C. Gotwals, engineering commissioner for the District of Columbia, in a similar report indicated that he did not believe any action would be taken upon the proposal to construct a municipal plant for general purposes, but that some further study might be given to the proposal to construct a plant for purposes of serving the government buildings and grounds alone.

The District of Columbia is served by the Potomac Electric Power Company and has

one of the lowest city rates for electricity in the United States considering the fact that the electric current is generated entirely from fuel.

Florida

Miami Officials Consider Utility Taxes

MUNICIPAL taxation of telegraph, telephone, and electric service, with any other utilities revenues that can be collected in addition to real estate was considered by Miami city commissioners at an executive session on September 18th preparatory to adoption of a license ordinance for the year beginning October 1st. The announcement was the first definite information of what "new sources of revenue" the commission would seek to obtain, to make up an estimated deficiency in tax collections.

Commissioners said plans so far are only in a tentative state and every effort will be made to prevent any special taxes being passed on to consumers. It was understood that franchises of all utility concerns were to be examined for legal interpretation in connection with possible efforts to collect franchise taxes.

Representatives of two theater chains, accompanied by the American Legion boxing management, made an attempt to get a hearing in which to protest against the proposed amusement taxes, but they found the sessions had been closed. It was pointed out that they were already paying Federal taxes.

Illinois

Car Receivers Unite against Transfer Plan

THE four receivers of the Chicago street car and elevated lines in a meeting on September 27th with Mayor Kelly and the city council committee on local transportation presented a united front against the establishment of the universal transfer privilege before the two systems are consolidated. They declared that the injection of the universal transfer issue into the transit reorganization problem would only "muddy the water." Calling attention to Federal Judge James H. Wilkerson's appointment of Attorney Walter L. Fisher as coördinator to speed up an agreement on a reorganization plan, the receivers requested a recess of the council committee for six weeks.

The meeting had been called by Mayor and Alderman James B. Bowler, chairman of the committee, to learn what plans the receivers had for immediate establishment of a universal transfer system, and what progress was being made toward a settlement of the transit question. In view of the appointment of Attorney Fisher, which was regarded as the first real evidence of progress, the committee after a discussion of the situation decided to recess the meeting for three weeks.

E. N. Hurley, one of the surface lines' receivers, said he thought the receivers might be in a better position to discuss matters with the committee within that time. Developments looking toward complete consolidation were expected very shortly, he declared.

Chicago Utilities Merger Proposed

A PLAN for the consolidation of the Commonwealth Edison Company and the Public Service Company of Northern Illinois through the exchange of two shares of the common stock of the former for three of the latter was reported to be ready for presentation to the Illinois Commerce Commission for its approval in a Chicago dispatch to the *Wall Street Journal* of September 28th. A number of operating, engineering, and financial advantages was expected to result from the amalgamation of the companies.

At the close of 1932, Edison had outstanding 1,611,421 shares of capital stock and Public Service Company 635,570 shares of common stock, of which a substantial block was owned by Commonwealth Subsidiary Corporation, an affiliate of the Commonwealth Edison.

The exchange offer, it was reported, would not affect the status of the preferred stock of the Public Service Company of Northern Illinois.

Indiana

Statements of Policy Announced by Commission

THREE distinct statements of policy were announced on September 25th by Perry McCart, chairman of the public service commission in the hearings on an order of the commission to the Public Service Company to show cause why the latter's rates should not be reduced. In substance, according to the Indianapolis *News*, the chairman promulgated as the commission's views the following:

1. That every utility operating under an indeterminate permit is a party to a contract with the state under which it is bound to provide adequate service at reasonable rates and is in default on its contract whenever its rates are unreasonable or its service inadequate.

2. That it is the duty of the public service commission to enforce this contract by any means in its power and it is not necessary that there be formal rate hearings in order to establish whether or not the company is defaulting in its contract to provide adequate service at reasonable rates.

3. The commission has no authority or interest in maintaining the companies' dividends on its capitalization and cannot legally pay heed to any requests made by stockholders for the preservation of their dividends on investments.

In the case at issue Chairman McCart ruled that the commission had jurisdiction over the question of the reasonableness of the rates charged by the Public Service Company in the 260 communities it served and authority to require the company to assume the burden of convincing the commission that the rates are reasonable.

In response to a direct interrogation from the company, the chairman refused, however, to say whether or not the commission would undertake to reduce the utilities rates by an order predicated on the hearing now in progress.

Kentucky

Municipal Plant Nearing Completion

THE Paris city-owned electric power and light plant, which is in the process of construction, is nearing completion and will be ready to supply electric current to the citizens of Paris on or about November 1st, according to official announcement on September 26th by the mayor and city commissioners. The rates to be charged for current from the city-owned plant which were announced on the same day, are the same as those charged in Paris by the Kentucky Utilities Company. Plans for a city-owned electric plant were initiated more than three years ago, after a proposed franchise for twenty years had been refused the Kentucky Utilities Company, for the reason that the rates proposed were considered exorbitant by the city officials.

Utility Indicted on Interest Charge

TWENTY-FOUR indictments charging failure to pay interest on consumer deposits were returned against the Kentucky Power & Light Company by the Mason county grand jury on September 26th. The indictments, which account for twenty-four separate alleged violations, are based on a law enacted by the 1932 legislature requiring utilities to pay 6 per cent interest on deposits. The deposits are required of all new customers. The requirements are $5 for electricity and $5 for gas. The grand jury reported that, to the best of its knowledge, the company had paid no interest whatsoever on deposits. Local attorneys said they believed the indictments were the first to be returned under the new law.

Maryland

Fight on Federal Loan for New Ferry

THE ferry line which the Chesapeake Beach Railway proposes to inaugurate between Chesapeake Beach and the Eastern Shore of Maryland could not be established without approval by the Maryland Public Service Commission, Philip B. Perlman, Baltimore attorney, told the technical board of the Public Works Administration in Washington

on September 21st. Mr. Perlman, appearing in behalf of the Claiborne-Annapolis Ferry Company, which is already operating a ferry line that would suffer from competition if the proposed ferry were put into operation, opposed a $425,000 loan which the Chesapeake Beach Railway Company is seeking from the Public Works Administration for the establishment of the line.

Mr. Perlman argued that the Interstate Commerce Commission had encroached upon the authority of the Maryland commission in granting permission to the Chesapeake Beach Railway Company to extend its lines by establishing the proposed ferry. Mr. Perlman also spoke against the proposed lending of Federal funds for the construction of the Chesapeake Bay bridge between Millers Island, near Baltimore, and the Eastern Shore of Maryland. Possibility that the state of Maryland would build and operate the proposed bridge developed earlier in the week.

Massachusetts

Telephone Stockholders May Be Fined

HENRY F. Long, state commissioner of corporations and taxation, announced on September 27th that stockholders of the American Telephone and Telegraph Company who reside in Massachusetts and who fail to pay the 6 per cent tax on dividends as required under an act passed during the last session of the legislature will be fined $5 a day after November 1st. The commissioner pointed out that the penalty will apply to all stockholders whether they have been notified by the state or by the company or whether they have received no notification.

Until the enactment of the legislation at the recent legislative session, stockholders in the company were not called upon to pay a tax on dividends because of a "gentleman's agreement" which existed between the company and the state and under which the company paid a lump sum yearly to the commonwealth, according to an account of the matter published in the Boston *Evening Transcript*. The agreement was ended and as a result the tax was placed on the stockholders. The first dividends to be taxed were those of the final period of 1932 and these are the only ones involved in the controversy existing at the present time.

Commissioner Long has requested the New England Telephone and Telegraph Company to supply him with a list of its stockholders. The company complied with the request and the commissioner then sent notification to the stockholders that they would be obliged to pay the state tax. The commissioner also asked the American Telephone and Telegraph Company for a list of stockholders who would be affected by the new law, but the company refused on the ground that such a step would not be good policy for the company in view of the fact that similar requests would be made by other states. The question of the right of the telephone company to withhold the list may be the subject of legal proceedings later when the 1933 taxation of dividends is in question.

Minnesota

Minneapolis Votes Gas Rate Cut

THE city council on September 19th ordered a 19.4 per cent reduction in gas rates, at the same time moving to submit a charter amendment permitting municipal ownership of a gas plant. The council action came in the face of a proposal by the Minneapolis Gas Light Company for an 18 per cent increase in rates. The ordinance resulted after negotiations for a compromise between officials of the company and city officials failed.

A subsequent proposal of Mayor A. G. Bainbridge that the city council renew negotiations with the Minneapolis Gas Light Company in an effort to obtain a gas rate adjustment without fighting out the matter in the courts was "checked up" to the company by the aldermen. Alderman William A. Currie, the chairman of the council gas committee, was attempting to get in touch with company officials to give them an invitation to "get around the table" with aldermen, rather than to take the matter into Federal court.

On September 22nd efforts were being made in the city council to obtain enough votes to override the mayor's veto of the resolution calling for $50,000 to fight any litigation which might grow out of the attempted enforcement of the rate cut. On September 28th

the gas company filed in Federal district court a petition for a temporary restraining order to prevent the enforcement of the ordinance from going into effect October 1st.

In an order issued at the conclusion of the hearing, the judges granted the temporary injunction, and set October 6th as the date for the hearing on the temporary order, ordering the Minneapolis Gas Light Company to file a bond in the sum of $20,000 for the protection of gas consumers should the rate be reduced.

Missouri

St. Louis Seeking Further Gas Rate Cut

DESPITE a 3½ per cent reduction in domestic and commercial gas rates ordered by the state public service commission, City Counselor Hay on September 21st declared that the city was carrying on its fight "to accomplish such further reductions as the public is entitled to." City Counselor Hay said that the commission was to be commended for the vigor with which it conducted the hearing and the promptness of its decision, but that permanent rate adjustment would continue to be handicapped by interminable hearings. While the percentage of decrease on consumers' bills is not as great as the city officials had insisted upon, Counselor Hay said that the city had secured two significant results: (1) a reduction of the Laclede Gas Light Company's valuation by approximately $12,000,000, and (2) a reduction of the rate of return from 7½ to 6½ per cent.

Shoppers' Fare to Be Continued

CONTINUATION of the "shoppers' fare" by the Public Service Company's street railway system in St. Louis for another month was decided upon September 21st at a conference between City Counselor Hay and officials of the street railway company. A mass of statistics on the results of the previous ten weeks of operation of the bargain fare was presented and analyzed. The result appeared to be that the street railway revenue during the experimental period had increased about $750 a day but that operating expenses had advanced about the same amount.

Receiver Henry W. Kiel said the result was too close to make accurate observations as to whether the experiment had been good or bad from the company's standpoint, and that it ought to be continued for another month or until more definite results could be obtained.

Nebraska

Rates for Unusual Telephone Appliances Announced

IN making changes in the general tariff of the Northwestern Bell Telephone Company which were approved by the Nebraska State Railway Commission, rates for service to a number of unusual appliances were announced. A Bell employee recently invented an amplifier which permits deaf persons to hear conversations over the wire. This service, which consists of a monotoype operated by a key switch on the telephone instrument, will cost $1 a month, in addition to the added rate of $1.75, now $2, charged for deaf equipment that is not so efficient, but which is utilized in the new service. No installation charge is made.

For 35 cents a month a voice silencer will be attached to a telephone which will permit a person to talk over his station without other persons in the room hearing what he says, thus making the conversation entirely confidential. Where subscribers have had thirty-six months' continuous service of a hand-type telephone, he will be relieved of the present charge of 25 cents a month in addition to regular rental, and periods where he has had suspended service under the company rules, will be charged against the thirty-six months, but will not lose him his rights for the lower rate when he has used it that long. An installation charge of $12 will be made for colored hand sets, but no charge for changing their location later.

In response to a demand for two-party business service at a lower rate than is charged for individual business service, the company has put into effect rate revisions for exchanges in the towns of Holdrege, Loomis, Brule, Ogalalla, Crawford, Elwood, Smithfield, and Farnam.

New York

Rehearings on New York City Rate Cut Closed

THE public service commission on September 28th completed the rehearings on its order directing temporary emergency rate reductions by the electric companies of the Consolidated system, serving in and about the city of New York. Milo R. Maltbie, chairman of the commission, fixed October 4th as the last day for filing briefs.

In the concluding testimony Robert B. Grove, vice president of the New York Edison and of the United Electric Light and Power Company, said the seven electric affiliates of the Consolidated had placed 1,780 additional employees since August 12th under the NRA utility code.

Mr. Maltbie noted a net drop of 930 in the total number of employees between January 1st and August 12th, and reminded Mr. Grove that "showing gross additions of employees without showing releases, retirements, and resignations isn't any more proof than showing gross additional fixed capital without giving retirements." The chairman stated that he was not rendering an opinion on this point, but merely warning the utility.

Mr. Grove later testified that 137 employees had left since August 12th, but that their places would be filled in addition to 2,100 to be employed under the code. Jerome Count, representing the Brotherhood of Edison Employees, asked Mr. Grove if it was the policy of the company to refuse employment to former employees who were members of the brotherhood. Mr. Grove answered that he knew of no such policy.

Rochester May Modify Service-at-cost Contract

AS a result of meetings held by the public utilities committee of the city council of Rochester, N. Y., with representatives of the bondholders of the New York State Railways, the commissioner of railways, and the receivers for the New York State Railways, it seems likely that a plan will be evolved for the modification of the service-at-cost contract. The details have not as yet been worked out, but it was hoped to complete them before October 16th. The present service-at-cost contract expired on July 31st, but was extended to September 30th and renewed again pending the present negotiations.

North Dakota

Varied Vote on Plant Bond Issues

MINOT, a city in Ward county, on September 21st rejected a $950,000 issue for construction of a municipal light and power plant; beat a proposed $140,000 issue for construction of a city hall and registered a close vote on bonds for a feeder road system, practically eliminating all possibility that the proposal would secure the necessary 60 per cent vote in the county as a whole. Enderlin, the only other city to include a municipal power plant proposal in its program for public works, approved a bond issue of $101,000.

Ohio

Assembly Quits without Voting Utility Taxes

ON September 21st the Ohio assembly adjourned without taking any action on the Gunsett bill to give state aid to impoverished rural school districts, which was connected also with a measure to raise revenue for such relief by increasing the tax on gas and telephone companies. The session of the house ended in a spirited meeting as Speaker Frank Cave ruled that the motion to adjourn had carried. Incensed at Speaker Cave's refusal to permit a roll call on the adjournment resolution, a group of assemblymen voiced their disapproval by remaining and holding a "rump" session, in which the house leadership was blamed for the failure of the relief and taxation program. Democrats supplied the bulk of the votes by which the adjournment resolution was adopted in the Senate.

Oregon

Columbia River Project Receives Federal Approval

A $20,000,000 allotment for a third giant power development on the Pacific Coast topped the list of projects that on September 29th received the approval from the Public Works Administration at Washington. The money will be used to begin construction of a dam and hydroelectric plant at Bonneville, Ore., on the Columbia river. Already a power and irrigation dam is being built at Boulder Canyon, on the Colorado river, in Arizona, and an allotment has also been made from the public works fund for a $63,000,000 dam at Grand Coulee, on the Columbia river.

It was estimated by public works officials that the Bonneville allocation would provide work for 17,000 men, with between 300 and 500 to be given jobs within forty-five days. The total cost of the Bonneville dam was placed at $31,000,000. In addition to giving employment and making the Columbia river navigable to the Snake river, it will be designed to aid flood and erosion control.

Pennsylvania

Commission Investigators End Three-year Inquiry

The senate public utility investigation, center of a three years' battle between Governor Pinchot and Republican organization leaders, was formally buried on September 25th. Franklin Spencer Edmonds, chief counsel, returned to individuals and corporations the huge stacks of exhibits deposited with the committee.

Injunction suits halted the committee's hearings last year and, after several informal sessions this year, the investigation was killed when Governor Pinchot vetoed a senate resolution which would have continued it.

Created to inquire into Governor Pinchot's charges that the public service commission was the "catspaw" of utility companies, the investigation was pursued by several groups amid the turbulence of recurring charges and counter charges by Governor Pinchot and senate leaders. The principal result was the McClure act, passed by the 1933 legislature and signed by Governor Pinchot, strengthening the state public service company law and giving the commission greater control over utility rate increases, securities, holding companies, and appliance sales.

In the midst of the dispute the governor gained control of the commission when five of his appointees became members, although none have as yet been confirmed by the senate which is expected to act on them at the special session in November.

Virginia

State Hydro-power Unit Proposed

A power development project which contemplates the expenditure of several millions of dollars, the creation of a great lake 35 miles long, development of a scenic area which might be turned into one of the greatest of the state parks now being developed and will relieve unemployment in one of the worst hit sections of Virginia, was discussed in Richmond September 20th with officials of the Federal public works board of Virginia.

The promoters of the projects are a group of North Carolina cities which desire to finance the project with Federal funds and develop water power for light and power for a dozen municipalities. The development will be in the general vicinity of Smith mountain, on the Staunton river, directly in the line of the proposed extension of the Skyline drive from the Shenandoah National Park area down the Blue Ridge into the Great Smoky area. It will be approximately fifty miles from Roanoke and only a few miles from Lynchburg. One of the dams which will be built if the project develops will be near Leesville. Hundreds of miles of power lines would be built, carrying power through southside Virginia counties into North Carolina. A description of the power project was carried in the Richmond *News Leader* of September 20th.

The Latest Utility Rulings

Missouri Commission Will Take Cognizance of Increased Utility Costs under the NRA Code

THE first official indication that the state commission will consider the increased costs which may be incurred by utilities in conforming with the code required by the National Recovery Administration in Washington appears to come from the Missouri commission in its recent order reducing the rates of the St. Joseph Water Company. The amount of return allowed in that case was 6½ per cent upon the fair value of the company's property as fixed by the commission at $4,400,000. The majority opinion stated on this subject:

> "Because we have anticipated future events when fixing a rate of return based upon past experience, we think it proper to take cognizance of the extensive recovery program inaugurated and about to be put into execution by the National Government. The so-called 'Code' applicable to this company will, if complied with by the company, result in higher wages, a larger personnel and increased overhead expenses. This commission advocates the signature of applicable code agreements by this and other utilities under commission regulation and the unqualified and strict compliance with the letter and spirit of such codes. If upon signature and compliance with its code by this company, the character of the service or the financial integrity of the company should be threatened, immediate relief can and will be given by the commission."

In a special concurring opinion, Commissioner Stoecker stated his belief that a return of 6½ per cent for this particular utility was a fair one under the prevailing conditions. He added:

> "The Federal government has launched a program under the National Industrial Recovery Act designed to put more men to work, increase wages, and thus restore purchasing power. To accomplish this purpose codes are being worked out for the various industries. These codes will cause an increase in operating costs of all industrial establishments and business enterprises. It is inevitable that at least a portion of this increase must be absorbed by the industry. Failing in this, the result would be to abort all the efforts of the administration at Washington to break the vicious circle in which we have been traveling for the past few years. The conclusion is inevitable. Capital must be content with a lesser return for the time being than it has been accustomed to."

Commissioner English dissented believing that the 6½ per cent rate of return was too low and that a 7 per cent return would be more proper. Commissioner English concurred in all other conclusions of the public service commission.

Among the other interesting points in the decision was the change of the commission's position taken in 1921 in the so-called "Kenyon" case (P.U.R.1921D, 590) to the effect that consumers with automatic sprinkler head systems for fire protection should pay a special water rate for the privilege of connection with a city water system. In its more recent declaration the commission stated:

> "It may be conceded that numerically the weight of commission and judicial authority is in favor of the special benefit doctrine announced by us in the Kenyon Case. Yet, we are now convinced, after careful consideration of the subject, that reason and logic are against the views which we expressed there. Fundamentally, the basis of the special benefit theory is that because one user can get a greater benefit from the same water service than another user, the first should pay a higher rate. This seems to us unsound and if carried to its logical conclusion would result in gross discrimination and tremendous difficulties in the creation of rate structures. It would mean, for example, that the laundryman who makes a profit out of the use of water for washing clothes should pay a higher rate for the water than, say, the butcher who makes no pecuniary profit out of its use and so on through the whole category of uses of the water. As is pointed out most forcibly in the brief of counsel for the sprinkler

users this theory has been repudiated in the case of rates charged for other utility services."

Another interesting point made in the majority opinion was to the effect that payments by operating utilities to corporate affiliates for managerial or other services are justifiable only: (1) where the services rendered are necessary to the successful operation of the utility; and (2) when the fees charged are no greater than the cost of such service if provided by an independent agency or performed by the utility's own personnel. *Re St. Joseph Water Co.* (*Case No. 6851.*)

Wisconsin Commission Makes Revisions in Rate-making Policies

THE Wisconsin-Michigan Power Company was ordered by the Wisconsin commission on October 3rd to make rate reductions of approximately $42,300 a year for residential consumers in Appleton and Neenah. Marking an innovation in rate making in Wisconsin the order will be effective for one year only, during which time the commission will retain jurisdiction with power to alter the schedules. The commission pointed out that its order contained but two outstanding features:

"(1) The commission creates a metropolitan area served by the Wisconsin-Michigan Power Company, which includes roughly Appleton and Neenah and the adjoining suburban area, with only residential and commercial lighting consumers affected.

"(2) The type of schedule prescribed is what the commission designates as a fixed or customer charge rate, a departure from the established type of rates now used by private utilities in all but a few of the smaller municipalities of the state."

The new schedule supplants what is now known as the active room basis wherein rates are charged according to the number of current outlets in rooms. *Re Wisconsin-Michigan Power Co.*

St. Louis Gas Rate Cut by Nearly Quarter Million

THE Missouri commission on September 21st ordered the Laclede Gas Light Company of St. Louis to reduce temporarily its rates to domestic and commercial consumers by approximately $212,000 a year, pending completion of an audit and appraisal by commission engineers and auditors. The reduction is approximately 3.5 per cent of the prevailing schedule. In denying the application of the city of St. Louis for a 20 per cent decrease in rates and also an application by the company for a 20 per cent increase, the commission found the "fair return" of the company should be 6.5 per cent. Heretofore the fair return allowance had been 7.5 per cent. The company was ordered to file a new schedule of rates with the commission by October 12th, to become effective November 1st.

The commission fixed the tentative "fair value" of the company, which may be increased or decreased, pending a final decision, at $39,062,000, on which the company will be permitted to earn the allowed 6.5 per cent. Chairman Collet who wrote the prevailing opinion stated:

"It apparently is the contention of the city that the return of the utility should have been reduced to the same extent as the decline in the cost of living. The company has furnished no evidence on this point.

"We deem it proper to point out, however, that utility rates are not subject to all of the many changing influences that govern the prices of other commodities, and are not forced up or down by speculation, surpluses, or shortages, or by other causes which may have no relation to the actual cost or value of service.

"Utility rates and returns are relatively stable, and are governed largely by the cost of service, and in periods of low prices utility rates cannot be expected to keep pace with the general price level, unless in periods of inflation they are permitted to rise correspondingly with general prices."

In his dissenting opinion, which was concurred in by Commissioner Stoecker, Commissioner English pointed out that the majority had decreased the rate base by 4.9 per cent upon the ground that that proportion of the capacity of the entire gas property would not be used and useful in the public service during the year ending May 31, 1934. This departure from former principles of regulation applied by the commission, Commissioner English said, "does not assume that any of the property in the rate base is wholly unused, but that all of the property is not used in its former capacity." Commissioner English believed that the record in the case did not justify the application of such a principle, since the fluctuation and demand was readily accounted for by the existence of an economic depression and that the decrease in consumption was purely temporary. Mr. English stated that the consistent application of such a principle would "encourage equally unwarranted applications for increased rates by the utilities when the present depression is over, which applications could not consistently be denied if it be once admitted that the rate base swells and shrinks with the ordinary fluctuations of the business of public utilities." *City of St. Louis v. Laclede Gas Light Co.*

Commission Refuses to Oust Private Competitor to Municipal Plant

THE city of Sikeston lost its fight to oust the Missouri Utilities Company from operating an electric plant in competition with its municipally owned system, when the Missouri commission, in an opinion written by George H. English, denied the application of the city of Sikeston for a commission order directing the Missouri Utilities Company to abandon its Sikeston plant.

Commissioners Stoecker and Anderson concurred in the majority opinion, while Chairman J. C. Collet and Commissioner Hull dissented, the latter in a separate opinion. The majority opinion turned chiefly upon a jurisdictional point, Commissioner English stating that "utilities which are lawfully in the competitive field must be left so by us. Our powers are merely to prevent, by the requirement of a finding of public convenience and necessity the entry of a utility into a field already adequately served."

In the application filed with the commission last November, the city had asked that the company's certificate of convenience and necessity be set aside and the company ordered to vacate the streets, alleys, and other highways of the city of Sikeston. Shortly before, the supreme court of Missouri had held that the city was estopped by reason of laches from ousting the utility because it had accepted annual payments of taxes by the private company for more than nine years after the expiration of the company's franchise. The court said it was for the public service commission to determine whether a need for the company's services in Sikeston still existed. *City of Sikeston v. Missouri Utilities Co.*

Penalty to Enforce Payment of Utility Bills Held Illegal

REVIVING and accepting an opinion given by Arthur L. Gilliom, state attorney general several years ago, the Indiana Public Service Commission has ruled that penalties levied against consumers for failure to pay bills promptly are illegal. The commission also refused to establish "gross rates" with discounts for prompt payments. Chairman Perry McCart said it is the commission's duty to set "just and reasonable rates under the statute" and that

there can be only one rate that falls within this classification. The statute provides that a utility cannot legally charge a greater rate than the reasonable rate set by the commission, and it is the position of the commission that while the utility may offer a discount from the reasonable rate established by the commission, it cannot levy a penalty in excess thereof.

It was estimated by the *Indianapolis News* that nearly 90 per cent of gas and electric rate schedules in Indiana called for "gross rates" with discounts, and that application of the commission's position may result in diminishing revenue of utilities throughout the state by an annual rate of about $500,000, although the commission's order was specifically limited to the seven electric rates that were under dispute. The commission ordered new schedules to be filed in each case.

The opinion rendered by former Attorney General Gilliom was in response to a request by John McCardle, former member of the commission, but was never accepted as the rule by the commission, which until the recent opinion of Chairman McCart permitted utilities to add penalties for slow payment of bills without action. Orders were issued to the Northern Indiana Power Company and directed the elimination of gross rates in the following communities: Bridgeton (10 per cent); Riley (11 per cent); Rosedale (10 per cent); Carbon (8.3 per cent); Lyford (9.7 per cent); Mulberry (7.2 per cent); Twelve Miles (13.4 per cent).

The Gilliom opinion had pointed out that utilities have available as a remedy to enforce the payment of their bills the right to discontinue service of delinquent patrons. *Re Northern Indiana Power Co.*

Personnel on Annual Compensation Basis As Affiliated Interests

THE meaning of the term "affiliated interests," as used in the 1932 legislation in Alabama, has been held by the commission of that state to include individuals performing services for compensation payable upon an annual or other basis. A contract with such an individual has been declared to be within the scope of a "management or service contract."

This decision resulted from an application by the Alabama Water Service Company which set forth that the company would pay no management fees to any holding company or to any management company, but that it had added to its payroll certain personnel whose offices were maintained in New York city. The Commission said:

> "The total amount agreed to be paid by the respondent for all of the services named amounts to $3,580 per annum.
>
> "The original management fee paid by this company was based on the charge of 2 per cent of the gross revenues, which for the year 1932, would have cost the company the sum of $14,811. A little later the company arranged for such management services through what was called the 'Utility Service Staff' agreement, which was estimated to cost approximately 1 per cent of gross revenues. For the year 1932 this would have cost the company the sum of $7,400.
>
> "From the standpoint of cost to the respondent it is apparent that the latest arrangement under which contracts are made with the separate individuals for their services is a marked advance in the direction of economical management.
>
> "This plan of supervisory management is such as permits of more definite and certain evaluation than the plans which provide simply for a certain percentage of gross revenue to be applied in payment of supervisory management and services.
>
> "In its application, the respondent company expresses doubt as to whether the provisions of the act of the legislature approved November 9, 1932, General Acts of Alabama, extra session 1932, pages 233–238, apply to the employment of said individuals above referred to.
>
> "We think it is clear that such employment comes within the provisions of said act. The act defines 'holding companies' and 'affiliated interests.' 'Affiliated interests' is defined to include, (c) 'Every corporation or person with which the utility has a management or service contract.'
>
> "Section 5 of the act requires every utility engaged in business in this state to file

with the Commission a true and correct statement of every outstanding agreement between it and any affiliated interests, substantially affecting the financial status or credit of the utility or the management or control of the utility by such affiliated interests. The commission is given authority to investigate any such agreement and to pass upon the reasonableness thereof."

Re Alabama Water Service Co. Docket No. 6362.

Other Important Rulings

THE United States Circuit Court of Appeals has dismissed the suit by the Appalachian Power Company against members of the Federal Power Commission, in which the plaintiff claimed that the latter exceeded their powers in finding that the cost of Mitchell Dam was $3,500,000 less than the cost claimed by the company. The company had attacked the constitutionality of the Federal Water Power Act to the extent which it empowered the members of the commission to make the finding in dispute. The court pointed out that the United States was not a party to the suit, and in dismissing the cause stated: "We are without jurisdiction in such case not only because we cannot try the rights of the United States behind its back but also because we are without power to render declaratory judgment." The power commission had argued that the only way the constitutionality of the Water Power Act could be tested would be for the company to start building a dam in the New river without securing the license required by the Federal Water Power Act, in which case the Federal government would move to stop it. *Appalachian Power Co. v. Federal Power Commission.*

Federal Judge Luther B. Way on September 29th issued an order temporarily restraining the enforcement of the Virginia Corporation Commission's order handed down last May reducing Rosslyn Gas Company rates in Arlington and Fairfax counties. The commission had ordered the company's rates reduced from $1.50 per thousand cubic feet to $1.20 for small consumers. The company went into Federal court on grounds of confiscation. A date for a permanent injunction hearing in the case was not immediately fixed. *Rosslyn Gas Co. v. Virginia Corporation Commission.*

The Illinois Commerce Commission issued an order on September 29th placing severe restrictions upon the speed of passenger busses. Under the new regulations, effective October 1st, the speed limits for busses were as follows: Ten miles an hour in business districts, 15 miles an hour in residential districts, 20 miles an hour elsewhere in corporate limits, and 25 miles an hour on rural highways. Chester Moore, president of the Illinois Bus Operators' association, has declared that the enforcement of the rules will mean the ruination of common-carrier passenger business on the highway. *Re Speed of Passenger Busses.*

The United States District Court has dismissed for lack of equity a suit brought by the Oklahoma Gas & Electric Company to restrain various packing companies from proceeding with suits in the Oklahoma state courts predicated upon rights purported to be established by an order of the Oklahoma commission in 1926, requiring the utility to serve such industrial companies—notwithstanding the fact that the original order had since been withdrawn. The Federal court held that since the validity of the order may be and had been interposed by the utility as a defense to an action at law, there was an adequate remedy at law and the suit in equity could not be maintained. *Oklahoma Gas & Electric Co. et al. v. Oklahoma Packing Co. et al.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*